By Mr. NORRIS: Petitions of business men of fifth district of Nebraska; citizens of Lawrence, Nebr.; and citizens of Grant, Perkins, and Nuckolls counties, Nebr., against parcels-post and postal savings banks laws—to the Committee on the Post-Office and Post-Roads.

Also, petition of citizens of Nebraska, against passage of Senate bill 3940—to the Committee on the District of Columbia.

By Mr. PRATT: Paper to accompany bill for relief of Jessie G. Hopper (previously referred to the Committee on Invalid Pensions)—to the Committee on Pensions.

By Mr. PRAY: Letter and telegram of Hon. E. R. Taylor, mayor of San Francisco, and C. W. Hodgson, relative to the Hetch Hetchy grant of water privileges to San Francisco—to the Committee on the Public Lands.

Also, petition of Granite Miners' Union of Montana, favoring legal investigation of the Treadwell Mining Company—to the Committee on Mines and Mining.

By Mr. ROBINSON: Papers to accompany bills for relief of Albert McConnell, Mary J. Utter, and Richard B. Rankin—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of heirs of J. A. Patillo—to the Committee on War Claims.

By Mr. THOMAS of Ohio: Petitions of P. N. Krapp and others, Grayce Rawson and others, M. D. Hugley and others, and G. R. Pierce and others, all of the State of Ohio, favoring a parcels-post and postal savings banks bills—to the Committee on the Post-Office and Post-Roads.

Also, petition of citizens of Barberton, Ohio, favoring parcels-post and postal savings banks laws—to the Committee on the Post-Office and Post-Roads.

By Mr. WEEMS: Petitions of E. E. Mansfield and others, and citizens of Carroll County, Ohio, against parcels-post and postal savings banks laws—to the Committee on the Post-Office and Post-Roads.

Also, paper to accompany bill for relief of John D. Vail—to the Committee on Invalid Pensions.

By Mr. WILSON of Pennsylvania: Petitions of A. H. Buck and 24 other members of Westfield Grange, No. 1088, of Pennsylvania; W. T. Rich and 32 other members of Chatham Grange; and Francis Reid and 15 other members of Roulette Grange, No. 1289, for a parcels-post system and postal savings banks—to the Committee on the Post-Office and Post-Roads.

Also, petition of Paul Laverents, John W. Baker, and D. R. Kinport, against passage of H. R. 21261 (retirement plan for superannuated employees in the civil service)—to the Committee on the Post-Office and Post-Roads.

SENATE.

WEDNESDAY, *January 13, 1909.*

Prayer by Rev. Henry N. Couden, D. D., Chaplain of the House of Representatives.

The Journal of yesterday's proceedings was read and approved.

ELECTORAL VOTE.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of State, transmitting, pursuant to law, authenticated copies of the final ascertainment of electors for President and Vice-President appointed in the States of North Dakota and Texas, which, with the accompanying papers, were ordered to be filed.

ENROLLED BILL SIGNED.

A message from the House of Representatives, by Mr. C. R. McKenney, its enrolling clerk, announced that the Speaker of the House had signed the following enrolled bill, and it was thereupon signed by the Vice-President:

S. 4856. An act authorizing the Secretary of Commerce and Labor to lease San Clemente Island, California, and for other purposes.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of the Central Labor Union of Wilmington, Del., remonstrating against the enjoining of Samuel Gompers et al. from exercising their constitutional rights to freedom of speech, which was referred to the Committee on the Judiciary.

He also presented a petition of the Maryland School for the Blind, of Baltimore, Md., praying for the adoption of certain amendments to the census bill with respect to the record to be made of the blind in the United States, which was ordered to lie on the table.

Mr. SCOTT presented a petition of Robinson Grange, No. 251, Patrons of Husbandry, of the State of West Virginia, praying for the passage of the so-called "rural parcels-post" and "postal savings banks" bills, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of Alexander C. Moore, of Clarksburg, W. Va., praying for the enactment of legislation to create a volunteer retired list in the War and Navy departments for the surviving officers of the civil war, which was referred to the Committee on Military Affairs.

Mr. KITTREDGE presented a petition of the South Dakota Educational Association, of Aberdeen, S. Dak., praying for the enactment of legislation providing for a separation of the Bureau of Education from the Department of the Interior and making it a department under the charge of a secretary of education, which was referred to the Committee on Education and Labor.

Mr. GAMBLE presented a petition of the Black Hills Schoolmasters' Club, of Spearfish, S. Dak., praying that an appropriation be made for making available photographic folios of views taken in the work of the Geological Survey and the Reclamation and Forestry services, which was referred to the Committee on the Geological Survey.

Mr. KEAN presented petitions of Pascack Grange, No. 141, of Woodcliff Lake, Wayne Township Grange, No. 145, of Preakness, and Lincoln Grange, No. 136, of Westwood, Patrons of Husbandry, all in the State of New Jersey, praying for the passage of the so-called "rural parcels-post" and "postal savings banks" bills, which were referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of Archibald G. Smith, of Lambertville, N. J., praying for the passage of the so-called "postal savings banks bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the memorial of R. E. Blood, of Clifton, N. J., remonstrating against the enactment of legislation inimical to the railroad interests of the country, which was referred to the Committee on Interstate Commerce.

Mr. FRYE presented a petition of Silver Harvest Grange, Patrons of Husbandry, of Waldo, Me., and a petition of Franklin Grange, Patrons of Husbandry, of Woodstock, Me., praying for the passage of the so-called "rural parcels-post" and "postal savings banks" bills, which were referred to the Committee on Post-Offices and Post-Roads.

Mr. HOPKINS presented a petition of the Wind Mill Manufacturers' Club, of Batavia, Ill., praying for a general reduction of the tariff, and also for the appointment of a permanent nonpartisan tariff commission, which was referred to the Committee on Finance.

Mr. BURKETT presented a petition of the Commercial Club of Norfolk, Nebr., praying for the enactment of legislation granting travel pay to railway postal clerks, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the State Federation of Jewish Organizations, of New York City, N. Y., praying for the enactment of legislation to create the office of Jewish chaplain in the army and navy, which was referred to the Committee on Military Affairs.

Mr. DIXON presented a paper to accompany the bill (S. 8273) to amend an act approved May 30, 1908, entitled "An act for the survey and allotment of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," which was referred to the Committee on Indian Affairs.

Mr. BROWN presented a petition of the Commercial Club of Norfolk, Nebr., praying for the enactment of legislation granting travel pay to railway postal clerks, which was referred to the Committee on Post-Offices and Post-Roads.

Mr. RAYNER presented a petition of Linden Spring Grange, No. 260, Patrons of Husbandry, of the State of Maryland, praying for the passage of the so-called "rural parcels-post" and "postal savings banks" bills, which was referred to the Committee on Post-Offices and Post-Roads.

POSTAL SAVINGS BANKS.

Mr. NELSON. I present a paper, by Hon. L. B. Caswell, of Fort Atkinson, Wis., relating to postal savings banks. It is a very short and clear paper, and I move that it be printed as a document (S. Doc. No. 651).

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. SMOOT, from the Committee on Claims, to whom were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (H. R. 8050) for the relief of James R. Wyrick (Report No. 736); and

A bill (S. 7390) for the relief of Christina Rockwell (Report No. 737).

Mr. FULTON, from the Committee on Claims, to whom were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (H. R. 13319) for the relief of the heirs of Thomas J. Miller (Report No. 738); and

A bill (H. R. 17344) for the relief of Frederick Daubert. (Report No. 739.)

Mr. BURROWS, from the Committee on Naval Affairs, to whom was referred the bill (S. 7652) to provide suitable civilian clothing and a cash gratuity to naval prisoners on discharge, reported it without amendment and submitted a report (No. 740) thereon.

Mr. PERKINS, from the Committee on Naval Affairs, to whom were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 7651) to amend article 53 of the Articles for the Government of the Navy (Report No. 741);

A bill (S. 7793) to provide for the naturalization of aliens who have served, or shall hereafter serve, five years in the United States Navy or Marine Corps (Report No. 742); and

A bill (S. 7872) to promote the administration of justice in the navy (Report No. 743).

Mr. McCUMBER, from the Committee on Pensions, to whom were referred certain bills granting pensions and increase of pensions, submitted a report (No. 744), accompanied by a bill (S. 8422), granting pensions and increase of pensions to certain soldiers and sailors of the civil war and to widows and dependent relatives of such soldiers and sailors, which was read twice by its title, the bill being a substitute for the following Senate bills heretofore referred to that committee:

S. 86. William T. Johnson;
S. 710. Henry T. Powell;
S. 1062. John L. McKee;
S. 1169. Dexter E. Boyden;
S. 1607. William W. Peck;
S. 1715. George Blake;
S. 1914. Fannie E. Holden;
S. 2060. William W. Scott;
S. 2477. John N. Williams;
S. 2605. Sarah Martin;
S. 3064. Thomas Greenley;
S. 3191. John W. Ervin;
S. 3195. William H. Dodd;
S. 3221. James W. Cobb;
S. 3306. Henry C. Bodkin;
S. 3334. Turner Lacey;
S. 3520. Nelson W. Armstrong;
S. 3598. William J. Conrad;
S. 3788. Thomas S. Wineteer;
S. 4178. Philip H. Showers;
S. 4198. Henry C. Elliott;
S. 4225. Wyman F. Patten;
S. 4253. James D. Davis;
S. 4523. Mary M. Ball;
S. 4597. Jacob Mays;
S. 4621. Charles C. Jones;
S. 5119. Caroline Coburn;
S. 5244. Robert E. Banks;
S. 5494. Isaac H. Isaacs;
S. 5504. James A. Brians;
S. 5561. Hiram B. Lord;
S. 5567. James P. Nowland;
S. 5803. Benoni Lewis;
S. 6034. Sarah A. Horr;
S. 6170. Robert W. McCullough, jr.;
S. 6203. Charles J. Hinds;
S. 6210. Henry M. Barber;
S. 6243. James H. McAllister;
S. 6282. Richard D. Coonen;
S. 6395. Joseph L. Wright;
S. 6501. Isabella R. Vosburgh;
S. 6519. George S. Warren;
S. 6570. Eben T. C. Lord;
S. 6651. Francis Weaver;
S. 6680. John A. Pattee;
S. 6735. Washington F. Landers;
S. 6763. Thomas Phelan;
S. 6779. Calvin Boyer;
S. 6785. James A. Grant;
S. 6814. Frank M. Swann;
S. 6827. Christian Paul;
S. 6842. John W. Knapp;
S. 6860. Arthur R. Curtis;
S. 6889. Henry D. Parsons;
S. 6983. Samuel D. Hurd;
S. 7025. Rodney N. Hall;
S. 7036. Hobert B. Doolittle;
S. 7040. Thomas Fox;
S. 7158. Melzar E. Beard;
S. 7229. Barnum Slocum;
S. 7280. Josiah N. Eastman;
S. 7285. Freeland Q. Andrews;
S. 7295. George P. Tucker;
S. 7300. Henry M. Washburn;
S. 7303. John A. Flanders;
S. 7304. Warren Abbott;
S. 7322. Ira S. Allen;
S. 7323. James Kirby;
S. 7332. Franklin R. St. John;
S. 7333. John W. Son;
S. 7354. Francis N. Brokaw;
S. 7356. David C. Crawford;
S. 7382. Robert L. Wilson;
S. 7383. Edwin B. Paddock;
S. 7385. Melvin P. Miller;
S. 7386. Adam Wingenfield;
S. 7389. George W. Becker;
S. 7397. Berdette M. Sperry;
S. 7409. Charles S. Baker;
S. 7411. Berge Johnson;
S. 7417. John Egan;
S. 7426. William A. Richardson;
S. 7438. Lucius Bigelow;
S. 7440. Edwin M. Haynes;
S. 7453. Eliza Palmer;
S. 7459. Francis I. Gardiner;
S. 7471. Elisha Bridges;
S. 7493. David F. Painter;
S. 7494. Charles H. Rankin;
S. 7512. Ira A. Silvernail;
S. 7517. Allen T. Landress;
S. 7540. Ebenezer Winslow, now known as Eben C. Thomas;
S. 7556. George W. Palmer;
S. 7581. Eli W. Wilhite;
S. 7597. Samuel T. Cromwell;
S. 7621. John B. Hazen;
S. 7658. Thomas K. Hastings;
S. 7671. William H. Knight;
S. 7725. Leander Stillwell;
S. 7736. Stephen M. Gilley;
S. 7798. Emily C. Twitchell;
S. 7807. Almeran A. Stillman;
S. 7820. Julia F. Darling;
S. 7837. Edward E. Houstain;
S. 7933. George W. Curl;
S. 7950. Ann M. Mason;
S. 7985. Thomas Painter;
S. 8027. Oliver S. Adams;
S. 8061. Ezra P. Pyram;
S. 8077. Edwin Potter;
S. 8081. Charles E. Sherman; and
S. 8082. Alexander G. Smith.

Mr. CULLOM, from the Committee on Foreign Relations, to whom was referred the amendment submitted by Mr. KNOX on the 12th instant, authorizing the President, by and with the advice and consent of the Senate, to appoint an Under Secretary of State and also a Fourth Assistant Secretary of State, intended to be proposed to the legislative, etc., appropriation bill, reported favorably thereon and moved that it be referred to the Committee on Appropriations, which was agreed to.

OWNERS OF STEAMSHIP "TABASQUENO."

Mr. FRYE. I report back favorably from the Committee on Foreign Relations with an amendment the bill (H. R. 23351) for the relief of the owners of the Mexican steamship *Tabasqueno* and I submit a report (No. 735) thereon. The matter has been pending for a long while and I should like to have it acted on now.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The amendment was in line 7, after the word "Tabasqueno," to insert "with interest at 6 per cent from the date of the seizure," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any funds in the Treasury not otherwise appropriated, the sum of $13,485.70 to the owners of the Mexican steamship Tabasqueno, with interest at 6 per cent from

the date of the seizure, being for the arrest and detention of the ship and damage to her cargo during the war with Spain, the same being in full of their claim for the arrest and detention of the said ship and damage to her cargo by reason of the seizure of the U. S. S. Hawk, July 30, 1898.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

BILLS INTRODUCED.

Mr. BANKHEAD introduced a bill (S. 8423) for the relief of the heirs of James Y. Brame, which was read twice by its title and, with the accompanying papers, referred to the Committee on Claims.

Mr. PENROSE introduced a bill (S. 8424) for the relief of the owners of lighter No. 128, which was read twice by its title and referred to the Committee on Claims.

He also introduced a bill (S. 8425) granting a pension to Eliza S. Blumer, which was read twice by its title and referred to the Committee on Pensions.

Mr. SCOTT introduced a bill (S. 8426) granting an increase of pension to Virginia L. Caldwell, which was read twice by its title and, with the accompanying paper, referred to the Committee on Pensions.

Mr. McCUMBER introduced a bill (S. 8427) to provide for the payment of installments due on contracts or land entries made under the provisions of an act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, which was read twice by its title and referred to the Committee on Irrigation and Reclamation of Arid Lands.

Mr. SMOOT introduced a bill (S. 8428) granting an increase of pension to Philander C. Burch, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. PILES introduced a bill (S. 8429) to refund certain tonnage taxes and light dues levied on the steamship *Montara*, without register, which was read twice by its title and, with the accompanying papers, referred to the Committee on Commerce.

Mr. PILES (for Mr. ANKENY) introduced a bill (S. 8430) granting an increase of pension to Simon Terwilliger, which was read twice by its title and referred to the Committee on Pensions.

Mr. DAVIS introduced the following bills, which were severally read twice by their titles and, with the accompanying papers, referred to the Committee on Pensions:

A bill (S. 8431) granting an increase of pension to Henry B. Wallis; and

A bill (S. 8432) granting an increase of pension to Lucius Fuller.

Mr. GAMBLE introduced a bill (S. 8433) for the relief of the First National Bank of Bellefourche, S. Dak., which was read twice by its title.

The VICE-PRESIDENT. To what committee does the Senator from South Dakota wish to have the bill referred?

Mr. GAMBLE. The Committee on Irrigation.

Mr. CLAPP. It strikes me that that bill and the bill for refunding certain tonnage taxes, recently introduced, should both go to the Committee on Claims.

Mr. GAMBLE. The bill I have just introduced has reference to the construction of an irrigation ditch for the Reclamation Service in Bellefourche, and it is in reference to the appropriation of funds taken up by the Interior Department. I am sure it should be referred to the Committee on Irrigation.

The VICE-PRESIDENT. Without objection, it will be so ordered.

Mr. GAMBLE introduced a bill (S. 8434) granting an increase of pension to Thomas E. Stanley, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. KITTREDGE introduced the following bills, which were severally read twice by their titles and, with the accompanying papers, referred to the Committee on Pensions:

A bill (S. 8435) granting an increase of pension to John E. Green;

A bill (S. 8436) granting a pension to John Lowell; and

A bill (S. 8437) granting an increase of pension to James McKinley.

Mr. CLAY introduced a bill (S. 8438) granting an increase of pension to Carrie Hoyle, which was read twice by its title and referred to the Committee on Pensions.

Mr. DIXON introduced a bill (S. 8439) authorizing the Secretary of the Interior to appraise lands in the Fort Peck Indian Reservation, Mont., and grant the same to the Great Northern Railway, which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. BORAH introduced a bill (S. 8440) for the relief of applicants for mineral surveys, which was read twice by its title and referred to the Committee on Mines and Mining.

Mr. CLAPP introduced the following bills, which were severally read twice by their titles and referred to the Committee on Indian Affairs:

A bill (S. 8441) to authorize the Secretary of the Interior to cause to be surveyed any unsurveyed lands belonging to the Five Civilized Tribes, and for other purposes;

A bill (S. 8442) to authorize cancellation of Indian allotments covering unsuitable lands and allotment of lands in lieu thereof, and for other purposes; and

A bill (S. 8443) to authorize the Secretary of the Interior to permit the quarrying and sale of tufa stone from the San Carlos Indian Reservation in Arizona, and for other purposes.

Mr. CLAPP introduced a bill (S. 8444) granting a pension to Miranda A. Wheelock, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 8445) providing for the distribution of Supreme Court reports by the superintendent of documents, and for other purposes, which was read twice by its title and, with the accompanying papers (S. Doc. 652), which were ordered to be printed, referred to the Committee on the Judiciary.

Mr. HEYBURN introduced a bill (S. 8446) to create an additional division in the judicial district of the State of Idaho, which was read twice by its title and referred to the Committee on the Judiciary.

Mr. MARTIN introduced a bill (S. 8447) for the relief of Enoch D. Smith, which was read twice by its title and referred to the Committee on Claims.

Mr. DANIEL introduced a bill (S. 8448) granting a pension to Marcelina J. Cox, which was read twice by its title and referred to the Committee on Pensions.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. TELLER submitted an amendment proposing to appropriate $33,400 for the support and education of 200 Indian pupils at the Indian school at Grand Junction, Colo., etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. FRYE submitted an amendment proposing to appropriate $25,000 for the construction of a suitable vessel or launch for the Customs Service, for use at and in the vicinity of Portland, Me., etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. FLINT submitted an amendment proposing to appropriate $400,000 for the purchase of land for a site, location, and construction of works for fortifications and coast defenses and emplacements therefor at Point Firmin, Cal., intended to be proposed by him to the fortifications appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

IMPROVEMENT OF BIG SIOUX RIVER, SOUTH DAKOTA.

Mr. KITTREDGE submitted the following concurrent resolution (S. C. Res. 68), which was referred to the Committee on Commerce:

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, directed to cause a survey and estimates to be made for a project of straightening and improvement of the Big Sioux River, in the State of South Dakota, and report same to the Congress.

RELATIONS BETWEEN CONGRESS AND THE EXECUTIVE DEPARTMENTS.

Mr. BACON. Mr. President, I offer a resolution, and after it has been read I will request the Senate to permit me to submit a few remarks upon it.

The resolution (S. Res. 248) was read, as follows:

Resolved by the Senate, That any and every public document, paper, or record, or copy thereof, on the files of any department of the Government, relating to any subject whatever over which Congress has any grant of power, jurisdiction, or control, under the Constitution, and any information relative thereto within the possession of the officers of the department, is subject to the call or inspection of the Senate for its use in the exercise of its constitutional powers and jurisdiction.

Mr. BACON. Mr. President, the particular matter involved in the resolution is one entitled to the serious consideration of the Senate. The importance of the consideration of the question raised by the resolution which has just been read at the

desk is emphasized and made a matter of present interest by a message which has recently been received by the Senate from the President of the United States, in which the right of the Senate to give a direction to a head of a department is, as stated in the message, denied in the most emphatic language. It is a matter of very far-reaching consequence, and affects not simply the dignity of the Senate, or perhaps, in one sense, the authority of the Senate, so far as that authority is an attribute of its dignity, but affects the power of the Senate to perform its legitimate constitutional functions.

The message to which I refer was in response to a resolution offered by the Senator from Texas [Mr. CULBERSON], which is found upon page 543 of the RECORD of this session, January 6. I am going to ask that the resolution and the entire response of the President may be inserted at this point in my remarks. I will not detain the Senate by reading the entire resolution and communication now, because they have so recently been before the Senate that all Senators are familiar with the fact that the resolution was one which related to the question of the action or nonaction of the Attorney-General in regard to the absorption of the Tennessee Coal and Iron Company by the Steel trust, and asking whether there had been such action, and the message of the President in which he informed the Senate that he had directed the Attorney-General not to make response.

The VICE-PRESIDENT. Without objection, the resolution and message will be printed in the RECORD.

The matter referred to is as follows:

To the Senate:

In connection with the following resolution of the Senate, passed January 4, 1909:

"*Resolved*, That the Attorney-General be, and he is hereby, directed to inform the Senate:

"1. Whether legal proceedings under the act of July 2, 1890, have been instituted by him or by his authority against the United States Steel Corporation on account of the absorption by it in the year 1907 of the Tennessee Coal and Iron Company, and if no such proceedings have been instituted state the reasons for such nonaction.

"2. Whether an opinion was rendered by him or under his authority as to the legality of such absorption; and if so, attach a copy if in writing, and if verbal state the substance of it."

I transmit herewith the following letter from the Attorney-General:

OFFICE OF THE ATTORNEY-GENERAL,
Washington, January 6, 1909.

THE PRESIDENT, *The White House.*

SIR: In accordance with your instructions, I have the honor to inclose you a certified copy of the resolution adopted by the Senate wherein I am directed to inform the Senate whether legal proceedings under the act of July 2, 1890, have been instituted by me or by my authority against the United States Steel Corporation on account of the absorption by it, in the year 1907, of the Tennessee Coal and Iron Company. As you are aware, no such proceedings have been instituted.

I remain, yours, most respectfully and truly,

CHARLES J. BONAPARTE,
Attorney-General.

As to the transaction in question I was personally cognizant of and responsible for its every detail. For the information of the Senate I transmit a copy of a letter sent by me to the Attorney-General on November 4, 1907, as follows:

THE WHITE HOUSE,
Washington, November 4, 1907.

MY DEAR MR. ATTORNEY-GENERAL: Judge E. H. Gary and Mr. H. C. Frick, on behalf of the Steel Corporation, have just called upon me. They state that there is a certain business firm (the name of which I have not been told, but which is of real importance in New York business circles) which will undoubtedly fail this week if help is not given. Among its assets are a majority of the securities of the Tennessee Coal Company. Application has been urgently made to the Steel Corporation to purchase this stock as the only means of avoiding a failure. Judge Gary and Mr. Frick inform me that as a mere business transaction they do not care to purchase the stock; that under ordinary circumstances they would not consider purchasing the stock, because but little benefit will come to the Steel Corporation from the purchase; that they are aware that the purchase will be used as a handle for attack upon them on the ground that they are striving to secure a monopoly of the business and prevent competition—not that this would represent what could honestly be said, but what might recklessly and untruthfully be said. They further inform me that as a matter of fact the policy of the company has been to decline to acquire more than 60 per cent of the steel properties, and that this purpose has been persevered in for several years past with the object of preventing these accusations, and as a matter of fact their proportion of steel properties has slightly decreased, so that it is below this 60 per cent, and the acquisition of the property in question will not raise it above 60 per cent. But they feel that it is immensely to their interest, as to the interest of every responsible business man, to try to prevent a panic and general industrial smash up at this time, and that they are willing to go into this transaction, which they would not otherwise go into, because it seems the opinion of those best fitted to express judgment in New York that it will be an important factor in preventing a break that might be ruinous; and that this has been urged upon them by the combination of the most responsible bankers in New York who are now thus engaged in endeavoring to save the situation. But they asserted they did not wish to do this if I stated that it ought not to be done. I answered that while of course I could not advise them to take the action proposed, I felt it no public duty of mine to interpose any objection.

Sincerely, yours,

THEODORE ROOSEVELT.

Hon. CHARLES J. BONAPARTE,
Attorney-General.

After sending this letter I was advised orally by the Attorney-General that, in his opinion, no sufficient ground existed for legal proceedings against the Steel Corporation and that the situation had been in no way changed by its acquisition of the Tennessee Coal and Iron Company.

I have thus given to the Senate all the information in the possession of the executive department which appears to me to be material or relevant on the subject of the resolution. I feel bound, however, to add that I have instructed the Attorney-General not to respond to that portion of the resolution which calls for a statement of his reasons for nonaction. I have done so because I do not conceive it to be within the authority of the Senate to give directions of this character to the head of an executive department, or to demand from him reasons for his action. Heads of the executive departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *January 6, 1909.*

Mr. BACON. It will be seen that the President, after himself giving the information which the Senate by its order had directed the Attorney-General to communicate to the Senate, concludes with this language:

I feel bound, however, to add that I have instructed the Attorney-General not to respond to that portion of the resolution which calls for a statement of his reasons for nonaction. I have done so—

And this is the part of the language to which I desire to invite especially the attention of the Senate, as the utterance which calls for some expression on the part of the Senate—

I have done so because I do not conceive it to be within the authority of the Senate to give directions of this character to the head of an executive department, or to demand from him reasons for his action. Heads of the executive departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever.

There could not be, Mr. President, a bolder and more emphatic denial of the power of the Senate to require any information from the head of a department than is expressed in that language; and the utterance by the President is all the more emphatic and important from the fact that it is a gratuitous denial of the authority of the Senate. If the President had said to the Senate, "I have determined and ordered that this information should not be given to the Senate," and then, as the reason why he had taken that responsibility, had added that he did not conceive it to be within the constitutional power of the Senate, it would not have been a gratuitous utterance. But the President gives all of the information which was desired by the Senate and which was called for by the direction to the Attorney-General, and then, without reason that he should so do, gratuitously, I repeat, makes this emphatic denial of the power on the part of the Senate to require from the head of a department any information by directing him to furnish the same.

I presume the language of the President is intended to convey the opinion that Congress, in its capacity as a lawmaking power, may require of the head of a department any information which it desires, but that the Senate itself can not; he means to say that only by an act of Congress can the head of a department be directed or by the order of the President himself; and in language which is not distinguished by its extreme courtesy he says to the Senate that there is no other power which can give direction to the head of a department.

Mr. President, I have discussed this question before the Senate heretofore, and much that I shall say now I have in substance said before. I think, however, that whenever such a challenge is made by the executive department denying this power on the part of the Senate, it should not be passed by without response, even though that response may be in large part repetition of what may have been said heretofore. If it is within the power of the Executive to lock up the executive departments and say to either House of Congress, "You shall have no information except such as I may permit," then it needs no elaboration to point to the conclusion of the autocracy in fact, whether in name or not, which must result.

Mr. President, while I have very clear views upon this subject, I recognize that if I can bring to the attention of the Senate and of the country, and possibly of the Executive, what has been said upon this subject by some of the greatest lawyers who ever sat in this body, it will have very much more effect than what I might myself say in my own proper place. Therefore, I propose to answer the challenge of the President of the United States in the main by what others have said, and not alone by what I myself shall now say.

It is not the first time, Mr. President, that there has been some friction between the Senate and the Executive upon this question, but I can say—I think without fear of mistake—that it is the first time the denial of the right of the Senate has ever been made in such unlimited and emphatic language as that now employed by the President.

Mr. HALE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Maine?

Mr. BACON. With pleasure.

Mr. HALE. I wish to ask the Senator a question. There are two distinct propositions in the President's message.

Mr. BACON. The Senator is quite correct.

Mr. HALE. The one relates to the right to call upon a Cabinet minister for his reasons, perhaps for not acting in a given matter. The other (and I should hope that the President has not taken square ground upon that) relates to a right that has been exercised for generations, and I do not know that it has ever been questioned.

Mr. BACON. I trust if the Senator has a question he will propound it.

Mr. HALE. I was going to ask the Senator a question. I will repeat the sentence with leave of the Senator. As to the direction of Congress to transmit papers or information in the department, I do not know that it has ever been questioned. I should hope it never would be questioned really. But I was going to ask the Senator, as I want to attend to what he says, if I can, to which of these propositions is his argument and his citation of authorities to be directed, the right of the Senate to call for reasons or the right of the Senate or of Congress to call for information, papers, and documents in the departments?

Mr. BACON. Possibly the Senator will get a better response to his inquiry in the development of what I have to say rather than in an attempt to state it in advance in a categorical answer to his question.

Mr. HALE. Mr. President, I hope I am not making myself offensive.

Mr. BACON. Not in the least. I am simply saying to the Senator that I will endeavor, in the development, to show to the Senate as fully as I can what my views are in regard to each of them.

Mr. HALE. Does the Senator propose to consider both propositions?

Mr. BACON. Yes; both.

Mr. HALE. I look upon them as wholly distinct.

Mr. BACON. I think they are distinct, but the Senator will agree that the language of the President covers both. If the President had limited this to the question whether reasons could be demanded, it would narrow the issue very much.

Mr. HALE. Very much.

Mr. BACON. And even as to that I think I can show on authority that we have the right to demand reasons. But the Senator requires me to anticipate in the very outset, before I have stated my proposition at all, in asking me what particular propositions I propose to argue.

Mr. HALE. I had a reason. Having been called from the Senate, and having just returned, I wanted to hear the Senator especially upon the distinctive point of the right to call for papers and information. I agree with him on the other.

Mr. BACON. I propose to discuss the entire question; at least I propose not so much to discuss it myself as to show what has been said by other very learned Senators on this floor.

As I was proceeding to say, the President does not stop at that. He does not stop at the question whether or not we have the right to demand reasons, but he goes on to say, in the most emphatic and peremptory language:

> Heads of the executive departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever.

That is as broad as human language can make it.

Mr. HALE. Let me ask the Senator, then——

The VICE-PRESIDENT. Does the Senator from Georgia yield further to the Senator from Maine?

Mr. BACON. With pleasure.

Mr. HALE. At the risk perhaps—I will not say of offending the Senator, because the Senator knows——

Mr. BACON. The honorable Senator need have no hesitation. I am not in the least offended, and there is no reason why I should be.

Mr. HALE. Does the Senator think that in that language, which I think we all noted with care, the President has committed himself to the proposition that Congress can not call upon the head of a department for information and for papers and documents in the department? I should hope that the President has not committed himself to that proposition.

Mr. BACON. I understand the language to be such as its plain meaning imports. The President says there are but three authorities from which direction can come to the head of a department. One is the Constitution, the other is a law passed in pursuance of the Constitution, and the third is the President himself, and adds—

> but to no other direction whatever.

If the Senator will permit me to proceed, I will endeavor to present the matter in a way that possibly might be more satisfactory than by endeavoring to state in advance the particular line rather than to permit the line to be developed.

Mr. HALE. It is an exceedingly important question, and I wanted to see generally before the Senator started what his propositions were and how far he considered the President has gone in his message; that is all.

Mr. LODGE. Will the Senator kindly again state where that message is in the RECORD?

Mr. BACON. It is on page 543 of the RECORD of January 6.

Mr. President, I believe I had said at the time the Senator from Maine [Mr. HALE] presented his inquiry, that while there had been some differences between the executive departments and the Senate with reference to the question of the power of the Senate to direct the head of a department, there had never been in the history of the Government so emphatic and peremptory a denial of the power of the Senate as is expressed in this message of the President.

The most remarkable discussion which was ever had upon this question occurred in the Senate some twenty-two years ago, during the first administration of Mr. Cleveland. That grew out of a matter connected with the dismissal of a district attorney in Alabama and the appointment by President Cleveland of his successor. When the matter of the confirmation of his successor was before the Senate, the Senate called upon the President for certain letters and other documents, which were alleged to be in the executive department, with a view of ascertaining what were the reasons of the President for the removal of the district attorney. That right was claimed under a law which then existed, known as the "tenure of office law," which required that before the removal of an officer could become effective the consent of the Senate should be had thereto. That law was passed during the administration of President Johnson, at the time of the great controversy between him and the Congress of the United States, with a view to preventing his removal of those whom Congress desired to have retained in office.

Mr. Cleveland denied the right of the Senate to call for those papers. The resolution asserting the right and power of the Senate was referred to the Judiciary Committee of the Senate, then composed of the most distinguished lawyers, I presume, who ever at any one time composed the Judiciary Committee of the Senate. I will read their names. On the part of the majority—they were the Republicans—they were George F. Edmunds, John J. Ingalls, S. J. R. McMillan, James S. Wilson, and William M. Evarts. On the part of the minority they were James L. Pugh, Senator Vest, Senator Coke, and Senator Jackson, who was afterwards a judge of the Supreme Court of the United States.

My attention has been called very kindly by the Senator from Michigan [Mr. BURROWS] to the fact that in reading the list of names I omitted the name of Senator Hoar. Why I did so I do not know; certainly it was not intentional, and the name was before me at the time. Senator Hoar was also a member of the committee at the time, and afterwards its chairman, and one of the most distinguished lawyers and learned scholars who ever sat in this body. I will again read the list to call the attention of the Senate more particularly to this great galaxy of illustrious lawyers—Edmunds, Ingalls, McMillan, Hoar, Wilson, Evarts, Pugh, Vest, Coke, and Jackson—and I repeat that I do not think there has ever been from the foundation of the Government to the present day a collection of such great lawyers at one time upon the Judiciary Committee of the Senate as the men whose names I have just read.

Upon this reference to the committee there was a majority report and a minority report. The remarkable fact is that among all those great lawyers there is no difference of opinion as to the fundamental question of whether or not the Senate has the right—not Congress in its lawmaking capacity, but the Senate—whether or not the Senate has the right, not to request or to ask, but to demand and require the head of any department to furnish any information or any paper or document in his possession or control which may be needed by the Senate in the discharge of its constitutional functions—to direct and command, not to request or to ask. The difference between the majority and the minority of the committee was upon a much narrower question.

It was contended on the part of the minority—the Democrats—that the paper in question did not belong to the official files; that it was a private letter to the President, and therefore not a matter within the power of the Senate to compel the production of.

There was one other distinguished Senator whose name I omitted from the minority—Senator George, of Mississippi, one of the greatest lawyers who ever sat in this or any other body or on any bench.

It was further contended—and that this particular contention was by Senator George was what called my recollection to the

fact that I had omitted his name—that the act of 1869, the tenure-of-office act, was an unconstitutional act, and that, therefore, Congress had no right to proceed under it to enforce the production of a paper which was the private paper of the President or was claimed to be so.

The two reports of those great lawyers absolutely agree upon the fundamental proposition that, so far as it related to any document or any paper or information in the control or keeping or possession of the head of a department, the constitutional right of the Senate was without question. There was no difference among those great lawyers as to that question; but the difference was on the narrower line, which I have indicated. But in arriving at their conclusions elaborate reports were made by each, the majority of the committee and the minority of the committee, and in each instance the report is signed not by the chairman of the committee or by some one representing the minority, but the report of the committee is signed in person by each of the great lawyers of the majority, whose names I have read, and the report of the minority is signed by each of the minority, none the less great lawyers, whose names I have also read.

Mr. President, I am going to read from that report, because it not only comes with greater authority than if the words were uttered by me, but the argument is much more cogently made than it would be within my power to make it; and, with the indulgence of the Senate, a large part of the time which I shall take the liberty of occupying, and of which I am sorry I have already consumed so much, will be occupied in the reading of what others have said.

I am reading, Mr. President, from a report made by the Judiciary Committee, known as Report 135, Forty-ninth Congress, first session, and I begin on the fourth page, although I shall have occasion to read a paragraph hereafter which precedes the one which I now read.

I want to say to the Senate that a large part of this report of the committee, and of the minority report as well, relates of course to the matter of papers and the right of the Senate to direct their production. This naturally followed from the fact that the production of certain papers was the subject-matter of the controversy. But Senators will find in the course of the report and of the debates upon it, from which I shall read, that the contention is not limited to the production of papers, but that it extends to the giving of any information and extends to reasons as well as to information; in other words, there is a recognition of the fullest, broadest, and most controlling power on the part of the Senate to know anything and everything which is in the possession of a department which it is important for the Senate to know in the discharge of its constitutional functions, and to know the reasons therefor. I am going to read this myself, rather than ask the Secretary to do so, if my strength holds out:

The important question, then, is whether it is within the constitutional competence of either House of Congress to have access to the official papers and documents in the various public offices of the United States created by laws enacted by themselves. It may be fully admitted that, except in respect to the Department of the Treasury, there is no statute which commands the head of any department to transmit to either House of Congress on its demand any information whatever concerning the administration of his department, but the committee believes it to be clear that from the very nature of the powers intrusted by the Constitution to the two Houses of Congress it is a necessary incident that either House must have at all times the right to know all that officially exists or takes place in any of the departments of the Government. So perfectly was this proposition understood before and at the time of the formation of the Constitution that the Continental Congress, before the adoption of the present Constitution, in establishing a department of foreign affairs and providing for a principal officer thereof, thought it fit to enact that all books, records, and other papers in that office should be open to the inspection of any Member of Congress, provided that no copy should be taken of matters of secret nature without special leave of Congress. It was not thought necessary to enact that the Congress itself should be entitled to the production and inspection of such papers, for that right was supposed to exist in the very nature of things, and when, under the Constitution, the department came to be created, although the provision that each individual Member of Congress should have access to the papers was omitted (evidently for reasons that can now be quite well understood), it was not thought necessary that an affirmative provision should be inserted giving to the Houses of Congress the right to know the contents of the public papers and records in the public offices of the country whose laws and whose offices they were to assist in creating.

It is believed that there is no instance of civilized governments having bodies representative of the people or of states in which the right and the power of those representative bodies to obtain in one form or another complete information as to every paper and transaction in any of the executive departments thereof does not exist, even though such papers might relate to what is ordinarily an executive function, if that function impinged upon any duty or function of the representative bodies.

Mr. President, I will not, of course, consume the time of the Senate in reading the whole of this report, and I may insert more of it in the RECORD than I now read, with the permission of the Senate.

The VICE-PRESIDENT. Without objection, permission is granted.

Mr. BACON (reading)—

A qualification of this general right may under our Constitution exist in case of calls by the House of Representatives for papers relating to treaties, etc., under consideration and not yet disposed of by the President and Senate.

I am still reading from the majority report—

The committee feels authorized to state, after a somewhat careful research, that within the foregoing limits there is scarcely in the history of this Government until now any instance of a refusal by a head of a department, or even of the President himself, to communicate official facts and information, as distinguished from private and unofficial papers, motions, views, reasons, and opinions, to either House of Congress when unconditionally demanded. Indeed, the early journals of the Senate show great numbers of instances of directions to the heads of departments, as of course, to furnish papers and reports upon all sorts of affairs, both legislative and executive.

The instances of requests to the President and commands to the heads of departments by each House of Congress from those days until now for papers and information on every conceivable subject of public affairs are almost innumerable, for it appears to have been thought by all the Presidents who have carried on the Government now for almost a century that even in respect of requests to them, an independent and coordinate branch of the Government, they were under a constitutional duty and obligation to furnish to either House the papers called for, unless, as has happened in very rare instances, when the request was coupled with an appeal to the discretion of the President in respect of the danger of publicity to send the papers if, in his judgment, it should not be incompatible with the public welfare.

Even in times of the highest party excitement and stress, as in 1826 and 1844, it did not seem to occur to the Chief Executive of the United States that it was possible that any official facts or information existing, either in the departments created by law or within his own possession, could, save as before stated, be withheld from either of the Houses of Congress, although such facts or information sometimes involved very intricate and delicate matters of foreign affairs, as well as sometimes the history and conduct of officers connected with the administration of affairs.

Now, Mr. President, I have here the minority report also, which is in the same volume. I could to advantage read from it at length, but I will read only a little of it:

The minority admit, once for all—

There is the broad recognition of the principle—

The minority admit, once for all, that any and every public document, paper, or record on the files of any department, or in the possession of the President, relating to any subject whatever, over which either House of Congress has any grant of power, jurisdiction, or control under the Constitution, is subject to the call or inspection of either House for use in the exercise of its constitutional powers and jurisdiction. It is on this clearly defined and well-founded constitutional principle that, wherever any power is lodged by the Constitution, all incidents follow such power that are necessary and proper to enable the custodian of it to carry it into execution. Whether the power is granted to Congress, or either House, or to the President, or any department or officer of the Government, or to the President by and with the advice and consent of the Senate, the principle is as fundamental as the Constitution itself, and all the necessary incidents of such grants accompany the grants and belong to and can be exercised by the custodians of such powers, jointly or severally, as they may be vested by the Constitution.

It is on the application and enforcement of this unquestioned rule of construction that either House of Congress has the right inherent in the power itself to direct the head of any department, or request the President to transmit any information in the knowledge of either, or any public or official papers or documents, or their contents, on the files or in the keeping of either, provided such papers or documents relate to subjects, matters, or things in the consideration of which the House making the call can use such information, papers, or documents in the exercise of any right, power, jurisdiction, or privilege granted to Congress, or either House, or to the President by and with the advice and consent of the Senate.

It will be seen that the minority, composed of these great lawyers, in the discussion of the question not only admit and assert most strongly the right of the Senate as to the production of papers, but admit and assert as fully the right to the requirement of the communication of any information of any kind whatsoever which may be within the knowledge of the head of any department or any subordinate officer thereof.

Mr. President, growing out of those two reports there was one of the most extended, earnest, elaborate, and learned constitutional debates which is to be found in the records of the Senate. I can not, through lack of time now, read it at length.

That debate was participated in, Mr. President, by as great lawyers as ever sat in this body—Mr. Edmunds, Mr. Evarts, Mr. Hoar, Mr. Wilson, Mr. Spooner, Mr. Sherman, and Mr. Logan, on the part of the majority; and Mr. Pugh, Mr. George, Mr. Vest, Mr. Coke, Mr. Jackson and others, on the part of the minority—and their speeches, made in that debate, are as valuable a contribution to constitutional literature as can be found from the beginning of the Government to the present time in the record of the debates of Congress.

I am going to read first, Mr. President, something from what was said by our late colleague here, Mr. Spooner. Of course I need to say nothing to the Senate as to the ability of Mr. Spooner as a lawyer, and his devotion to the law. Mr. Spooner, in my opinion, is a lawyer who is loyal to the law. A great many lawyers are not loyal to the law. In this instance he avowed that, while he was a party man, his great interest in this matter grew out of the question as to the constitutional

rights of the Senate, and he premised what he had to say by this language:

Mr. SPOONER. Mr. President, I make no attempt to disguise the fact, or to apologize for it, that the fortunes of the Republican party are very dear to me, and that I wish that party, here and elsewhere, to reap every fair partisan advantage which may be taken from the blunders and from the shortcomings, if any such there are or shall be, of this administration. But I trust I do not forget, and shall not forget, that I am a Senator of the United States as well as a Republican, and that as a Senator my first duty always is to the people, and that I have no right to take action here to subserve a party interest which would be harmful to the interests of the people.

I deny for myself, and I have authority to deny for every Senator upon this side of the Chamber, the statement so often made on the other side that we desire, or are willing, to harrass, hamper, or embarrass the President in the proper exercise of executive functions. Such a motive would be unworthy, and should not be so lightly imputed.

The principle involved in this controversy, to my mind, is far above the question as to who shall hold the offices in the country.

Having, Mr. President, placed himself upon that high plane, this great lawyer, then a Senator from Wisconsin, proceeded to discuss the question, and I quote in part what he then said. Said he:

Look at the bald case as it stands before the Senate and before the people, unaided by the message which the President sent upon the same subject, and which is in some sense an additional statement of fact. The Senate calls for certain papers, filed within a given period in a public department, touching the management of a public office. An executive officer of the United States, recognizing the fact that the papers are in his custody, not denying for a moment their existence, says to the Senate, by direction of the President, that "it is not considered that the public interest will be promoted by a compliance with said resolution and the transmission of the papers and documents therein mentioned to the Senate in executive session."

Is it to be admitted that a Cabinet officer, even by direction of the President, shall be at liberty to refuse to transmit any papers to the Senate in executive session unless satisfied that the purpose for which the Senate desires them is one which in his opinion is wise and proper? Is it to be assumed by an executive officer or by the President that because a nomination is pending in the Senate of a person to fill an office that the Senate may not in executive session lawfully call for the papers filed in a department touching the conduct of that office?

Mr. HOPKINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Illinois?

Mr. BACON. I do.

Mr. HOPKINS. Does the Senator contend that in the adoption of the resolution that called for the reasons of the President in the case which is now being discussed by the Senator the Senate has any greater power or authority to ask for those reasons than has the House of Representatives?

Mr. BACON. We have no greater authority, except in those matters which are peculiarly within the functions and powers of the Senate.

Mr. HOPKINS. Yes. I notice the authorities that are being read by the Senator relate to information touching public officers where the Senate is a coordinate branch of the Government and has a responsibility with the President. Now, in this case the inquiry was as to a law that had been passed by Congress and in connection with which the Senate had no more authority than the House of Representatives. It strikes me that it would be just as pertinent for the President of the United States to ask why the Senate or Congress did not pass a law as for the Senate or the House to ask the President the reasons why action was not taken on a law.

Mr. BACON. Well, Mr. President, the Senator bases his suggestion upon the proposition that the executive departments are within the control of the President and not within the control of Congress. If the Senator will permit me, before I get through I will endeavor to show him that the executive departments are entirely and peculiarly within the control of Congress.

Congress creates them; Congress confers upon them every power which they have; Congress can take from them their power or can give more power. It can create other departments and it can destroy those which exist.

Mr. HOPKINS. But the Senator, if he will allow me there, will note the fact that "Congress" is not asking for the reasons. It is one branch of Congress that is asking for them.

Mr. BACON. Undoubtedly; I understand that.

Mr. HOPKINS. That, to my mind, makes it an entirely different case.

Mr. LODGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Massachusetts?

Mr. LODGE. I merely want to ask a question, to see if I am right about the proposition the Senator is making.

Mr. BACON. I should like to answer the question of the Senator from Illinois first.

Mr. LODGE. I beg pardon. I thought the Senator had done so.

Mr. BACON. If the Senator will pardon me until I answer the Senator from Illinois, I will, with pleasure, reply to his inquiry.

Mr. LODGE. Certainly.

Mr. BACON. I was coming to the discussion, but I will anticipate it somewhat. The proposition of the Senator from Illinois is that Congress can demand information of a department, but that either House of Congress can not; in other words, that before a department can be required to give information it must be by a joint resolution or by an act of Congress. That would be true, Mr. President, if there were no separate functions of the two Houses. If Congress has the right to demand of a department or to require of a department any information, it is because Congress has a constitutional function—the function of legislation—which can not properly be performed except it has the information.

Now, the function of legislation, while when it is complete is the joint action of the two Houses, is a function performed by each House in its separate capacity. One House may not be in accord with the other as to the desire for certain legislation, and yet it is certainly within the function of each House to proceed in its own way in the investigations which are necessary for legislation. To say, when the Senate is engaged in the consideration of a question and needs certain information for its own guidance so as to determine how it shall legislate, that it must wait until an act of Congress shall be passed before it can require from a department the information which it needs in that legislation, is certainly without possibility of defense.

Mr. HOPKINS. If the Senator will allow me right there, it seems to me that a mistake is being made by the Senator from Georgia. The inquiry that is being made here is not an inquiry that will aid Congress in this matter at all. It is asking for the reasons why the Attorney-General has failed to act on a law that is upon the statute books of the United States.

Mr. BACON. I understand the Senator's point. How does the Senator know—I will not ask him the question to be answered now, for I prefer the Senator should make a speech in his own time, but I will ask it arguendo—how does the Senator know for what purpose the Senate demands this information? This is information desired as to whether or not a law which is on the statute books has been invoked in the effort to accomplish what is desired in the country in regard to the suppression of monopolies.

Therefore we asked the Attorney-General two questions: First, has there been under the present law any proceeding with reference to the absorption of the Tennessee Coal and Iron Company by the United States Steel Company? If not, why? What is the pertinency of that inquiry? We wish to know, if there has been no such proceeding, whether in the opinion of the Attorney-General the law is ample to cover the case, in order, if not ample, that we may proceed with the information which he gives us to amend that law. Is not that a matter of legislation? Is not the information called for pertinent and necessary for such legislation? And as to whether it is pertinent the Senate, as will be abundantly shown, must necessarily be the sole judge.

Now I will with pleasure hear from the Senator from Massachusetts, but I trust we may shortly get through with this colloquy.

Mr. LODGE. I have no intention at all of arguing the case.

Mr. BACON. I was speaking to the Senator from Illinois in suggesting the end of the colloquy.

Mr. HOPKINS. I will not take the time to argue that proposition. I think I can make a good answer to it——

Mr. BACON. I hope the Senator will.

Mr. HOPKINS. One satisfactory to my own mind at least.

Mr. LODGE. I understand the proposition of the Senator to be that we can require from any department any paper we desire.

Mr. BACON. Or any information we desire relative thereto.

Mr. LODGE. Does that apply to any department?

Mr. BACON. Of course.

Mr. LODGE. Does it apply to the State Department?

Mr. BACON. The Senator well knows——

Mr. LODGE. I am not speaking of the custom and habit——

Mr. BACON. The honorable Senator again interrupts me——

Mr. LODGE. I want to know about the right.

Mr. BACON. We have the right, if the Senator wants to know that.

Mr. LODGE. That is exactly what I want to know.

Mr. BACON. We have the right to compel the Secretary of State to send any papers we want. As to when we shall exercise that right the Senate can be relied upon to use a wise discretion.

Mr. LODGE. If they have the right to refuse in one department, they have in another.

Mr. BACON. I say they have not that right in any department, and I do not base that on my opinion. I am going to give the opinions of such men as Evarts and Hoar and Edmunds and

Wilson and Logan and George and Sherman and others. I could occupy much more time than I can possibly do with propriety to-day with the reading of these utterances by these learned men and Senators.

Mr. HOPKINS. If it does not interrupt the Senator too much, Senator Vest and other Democratic Senators during the Cleveland administration took exactly the opposite view to that expressed by Edmunds and Evarts.

Mr. BACON. I do not know whether the Senator from Illinois has been in the Chamber all morning. I stated earlier in my remarks in what particulars they differed and in what respects they agreed. It is very unfortunate that Senators should be out of the Chamber and come in and ask questions which have been fully discussed in their absence.

Mr. HOPKINS. I always feel unfortunate when I am out of the Chamber when the Senator from Georgia speaks.

Mr. BACON. The Senator will not be often embarrassed in that way. I speak very seldom. I have not made an extended speech before at this session of Congress.

When I was interrupted, I was reading from the speech of the former Senator from Wisconsin, Mr. Spooner, and it is rather unfortunate that so cogent and so closely connected an argument as that made by Mr. Spooner should be interrupted by this long colloquy which the Senator has interjected in order to learn what my view is. I was trying to tell him what Mr. Spooner said. Of course time will not permit me, especially with the frequent interruptions, to read this at length, but I will have to put the extracts in my speech without reading them.

Several SENATORS. Read them.

Mr. BACON. I hope Senators who have honored me with inquiries will listen to what others have said, not what I say, but what was said by men whose shoes I am not worthy to unlatch when it comes to legal ability and legal attainments. Mr. Spooner said:

It has always been supposed that either the House of Representatives or the Senate had plenary power to investigate the departments, had abundant authority to examine the Cabinet officers, even to bring them before the committee, with all papers in the office which would tend to show its condition, and the manner in which it had been conducted. It may be done in order to expose corruption; it may be done in order to uncover defects in the organization of a department; it may be done in order that Congress obtain the information essential to the application of a corrective by new legislation. Such power in great fullness must of necessity exist, to be exercised under varied conditions and circumstances, and with many different purposes.

Is this not the attitude? The President, not denying that there may be circumstances under which either the House or the Senate would be entitled to such papers, to demand them and compel their production, assumes that they are wanted for a purpose which in his judgment is not within the jurisdiction of the Senate. If for any purpose within the power of the Senate it can direct under any circumstances the Attorney-General, or any other Cabinet officer, to transmit to the Senate papers touching the conduct of a particular office, then it is essential to the orderly conduct of the Government that the executive officer should assume that the papers are desired for a legitimate purpose. Or has it come to this, that the Senate or the House demanding the production of papers, which either may rightfully demand for some purpose, must go with eastern salaam to the department door, bound to disclose, first to the Attorney-General or the President, the precise purpose for which the papers are desired, under penalty of not receiving them at all?

How would it look, in response to a resolution adopted by the Senate asking that the Attorney-General or the Secretary of the Interior transmit to the Senate papers like these, in their very nature official, relating to the transaction of the public business, for the President to transmit to the Senate a message of this nature?—"If you desire these papers you must first indicate to me the purpose for which you desire them, and if after having disclosed that purpose I think they are within your jurisdiction, and that the purpose to be subserved is a legitimate purpose, I shall transmit them; otherwise not."

Would that be in effect any different from this response of the Attorney-General? Would it not be humiliating? Would it be anything less than a one-man government? Would it do anything less than enable the President of the United States to shut out at his will the sunlight of investigation from all the public offices? Must the Senate, must the House—because if he may require the performance of that precedent condition of the Senate he may of the House—first advise him of the purpose and submit to his judgment as to whether it is a legitimate one?

Again, Mr. Spooner said:

I assert now the proposition that the Senate has a right to obtain of a Cabinet officer upon demand, and of the President upon request, such information to enable it to act intelligently upon the question as to whether it will advise and consent to a proposed removal.

It might with equal propriety be said "whether it will proceed to legislate upon a certain question."

The Senators on the other side will not, I think, charge that the issue so far as I am concerned is not broad enough.

Mr. Spooner, whom we all know, meant by that to say that he had stated that proposition as strongly and as broadly as it was in his power to state it, and Senators on the other side would not complain that it was not stated broadly enough. Then he goes on to say:

Is the proposition sound in law? I want no other principle of law to guide me to a conclusion in favor of the right of the Senate to the information upon that theory than is found in the report submitted by the minority of the committee—

This may answer, in some degree, the question propounded by the Senator from Illinois—

and the message which the President has seen fit to transmit. I call the attention of the Senate to the statement of the law in the report submitted by the minority of the Judiciary Committee. It is very guarded and very advisedly made and is sufficiently broad and accurate for the purposes for which I desire to use it.

He then quotes from the minority report—

The minority admit—

The part of the minority report I have already read—

The minority admit, once for all, that any and every public document, paper, or record on the files of any department, or in the possession of the President, relating to any subject whatever over which either House of Congress has any grant of power, jurisdiction, or control under the Constitution, is subject to the call or inspection of either House for use in the exercise of its constitutional powers and jurisdiction.

Then he goes on, quoting further, and continues:

Here, in a lawyer-like way, and in a bold way, as lawyers ought to state their case, the minority, without shuffling or technicality, place the question upon this proposition.

Here is Mr. Spooner's construction of what the minority says:

If the Senate of the United States has any jurisdiction over the subject-matter to which papers relate, or to which information in the hands of a department officer or in the hands of the President relates—

Not confining it, you see, to papers—

then they say unqualifiedly, and it would seem to be unmistakable law, the Senate has a right to the inspection of such documents and a right to elicit such information. The President, placing it upon a little different ground, recognizes the same principle, and in doing this he only follows the example of Washington in somewhat the same language upon the same subject, and of every Executive from Washington down, thus:

Then he quotes from the President, as follows:

To the end that the service may be improved, the Senate is invited to the fullest scrutiny of the persons submitted to them for public office, in recognition of the constitutional power of that body to advise and consent to their appointment. I shall continue, as I have thus far done, to furnish, at the request of the confirming body, all the information I possess touching the fitness of the nominees placed before them for their action, both when they are proposed to fill vacancies and to take the place of suspended officials.

Mr. Spooner, resuming, says:

Why? Because under the Constitution the Senate is a factor in the act constituting, on the whole, the appointment of the officer; because, in the language of the minority of the committee, the Senate under the Constitution has jurisdiction over "the subject-matter."

Now, Mr. President, one more extract from Mr. Spooner's speech on that occasion:

Possessing, therefore, the power—

After discussing fully and at length the very proposition which is suggested in the inquiry made of me by the Senator from Illinois, and coming to the conclusion that the power does exist, Senator Spooner goes on to say:

Possessing, therefore, the right to call for papers and information from the executive department of the Government necessary to enable the Senate to discharge with fidelity and intelligence its duty under the law in the matter of removals, it can not forego that right when in its opinion its exercise is necessary.

It can not suffer, by its acquiescence, the principle as to papers, now asserted by the executive department, to grow into precedent. It is not a question of etiquette, nor is it a question of politics. It is very far above either.

The Senate has no right to trench upon the prerogative or powers of the Executive. The maintenance, sacred and inviolate, of the prerogatives of the three great coordinate departments of the system under which we live, as the fathers framed it, is essential to the permanency and success of our Government. Neither should be permitted to trench upon the other, and neither may permit any impairment, through aggression or concession, of its constitutional faculties and prerogatives.

The Senate can not yield the principle that in any case or under any circumstances the files of the departments, evidencing the conduct of public officers, shall be secret from the inspection, or that any paper or letter bearing upon the conduct of a public office, placed upon the files of any department, or in custody of any executive officer, and which ought to be placed upon the files of any department, can, at the will of anybody, even though it be the President, become personal and subject to removal or destruction.

That related solely to the question whether or not the paper called for was on the official files, the President contending it was not, and admitting if it was a part of the official files it would be subject to the order of the Senate.

Mr. President, if it were practicable I should like to read all of this most cogent and logical argument then made by Senator Spooner in that great historic debate.

Now, Mr. President, I will read from Mr. Hoar, who was also, as I have stated, a member of the committee.

I understood the report—

Referring to the report of the committee represented by the majority—

I understood the report to affirm that the existence of this power in the Senate and the obedience to it by the heads of the departments are necessary—

Mark the language. It is Mr. Hoar who said this. I will read it again:

I understood the report to affirm that the existence of this power in the Senate and the obedience to it by the heads of the departments are

necessary for the due and orderly discharge of our constitutional duty, just as the existence of the right of freedom of debate is necessary to the discharge of our constitutional duty.

* * * * * * *

I agree, and I think all the Senate agree with the Senator from Oregon, that the power of seeing what are the papers on the files, on the official files, of the executive department is essential to a proper discharge of the duties of the Senate—a power never denied until this moment.

* * * * * * *

What we affirm is this, that the official papers on the files of this Government are to be seen, whenever they think it is necessary for the discharge of their duty, by the two branches clothed with the powers of legislation, and that is all; and that it is not for the President or the head of a department to determine what use we propose to make of them when we wish them.

The VICE-PRESIDENT. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. A bill (S. 6484) to establish postal savings banks for depositing savings at interest, with the security of the Government for repayment thereof, and for other purposes.

Mr. CARTER. I ask unanimous consent that the unfinished business be temporarily laid aside.

The VICE-PRESIDENT. The Senator from Montana asks unanimous consent that the unfinished business of the Senate be temporarily laid aside. Without objection, it is so ordered, and the Senator from Georgia will proceed.

Mr. BACON. Mr. President, I will now read some things said in that debate by that great constitutional lawyer, William M. Evarts, then a Senator from the State of New York.

I want to call attention to the fact that several of the Senators who participated in that debate had been Cabinet officers, as we call them—heads of departments. We call them by courtesy "Cabinet officers." No such officer as a Cabinet officer is known to the law. As a matter of courtesy they are called "Cabinet officers," not because they are heads of departments, but because the President voluntarily accepts them as his counselors. These distinguished men had been, using the common designation, Cabinet officers, and very eminent Cabinet officers. They were Mr. Evarts and Mr. Sherman; and Mr. Evarts I now read from, after he had served with distinguished honor in the Cabinet, and, as we all know, he was one of the most eminent lawyers of the United States, if not of the world. Mr. Evarts said:

The resolutions of the Judiciary Committee declare that the demand made by the Judiciary Committee for the papers described and under the circumstances in which the information is sought for should have been complied with by the Attorney-General, and that neither his duty nor the instruction of the President justified that refusal. In the minority report I can very briefly find what issue is joined, as I think, so far as a definite issue has been joined by this statement of opinion and duty, as the minority regard it, on the subject:

He again quotes what Senator Spooner quoted as to what the minority admitted was the constitutional right and authority of the Senate. I have already read it, but I will read it again. It can not be read too often:

The minority admit, once for all—

This was the contention, also, of the majority—

The minority admit, once for all, that any and every public document, paper, or record on the files of any department, or in the possession of the President, relating to any subject whatever, over which either House of Congress has any grant of power, jurisdiction, or control under the Constitution, is subject to the call or inspection of either House for use in the exercise of its constitutional powers and jurisdiction.

That is quoted by Mr. Evarts approvingly, having in view, as already stated, the matter in controversy, which was the demand for the production of papers. The reasoning and the expression elsewhere in the reports and in the speeches equally embraces all other information of every kind.

Now, upon this assertion of the Judiciary Committee's resolutions, and upon this admission by the minority of that committee and in the name of the party represented on the other side of the Chamber, it would seem to one familiar that if confinement should be made to the issue there would be very little doubt as to what the conclusion of the Senate would be on these resolutions; but topics have been introduced, topics have been enlarged upon, topics have been made the subject of legal and constitutional argument and of political declamation which, as it seems to me, when they are compared with the issue that is to be decided, when they are compared with the assertion of the Judiciary Committee and the issue presented by the minority of that committee, all, or almost all, that has had this large and general scope and application of political opinion and political issues has no relation to our duty now.

It is said in the first place, and thus the proposition of the committee is sought to be avoided, that the papers called for can by no means touch any matter subject to the public action of the Senate. Let us look a moment at that proposition. Who is to determine—

Here is a vital question—

in the first place that on a topic which the Senate has to do with it has a right to the inspection and use of papers in the departments, but it has no such right when the Senate can not possibly touch or deal with any subject-matter to which those papers relate? Who is to determine, in the first instance, that the Senate may or may not explore and make use of papers that are on file? Certainly the Senate is the judge of that.

The Senate, as a component part of the legislature represented in Congress, is not of limited jurisdiction. It is not confined to this or that topic. Whatever touches, in the language of one of the clauses of the Constitution, the common defense and the general welfare belongs to the two Houses of Congress. When, therefore, either House, under its responsibilities and under the determination of a constitutional majority of votes on any subject in either of these Houses, undertakes itself to deal with public documents and papers in the departments, it deals with what belongs to the Government of the United States for use by the Congress of the United States, and upon its judgment of what its duties, its faculties, and its proposed actions relate to. And now for the first time is it found that a preliminary question arises when the Houses of Congress, one or both of them, have asked for papers on file that there is a preliminary judgment to be exercised and to be final, and to be under the unlimited range of discretion and of personal judgment of the President, whether or not these papers that are described and exist as on the files or on deposit in the departments are, on the face of them, papers that belong to the uses and for the purposes of the duty of the Houses of Congress.

Where is this preliminary line to be drawn? Who is to be patient under it? Who is to look in the face the two Houses of Congress in the illimitable range of their duty, dealing in the matters of the departments, dealing with the matters there deposited and there preserved for the Government for its uses, for action in reference to the Government, and for no other purpose whatever? Who is at liberty to sift and cull out of these papers thus deposited and to be accorded this prejudgment of the action of the two Houses of Congress? Who is to be this arbiter between the Government and the Congress to determine what shall be given and what shall be withheld?

I should like to find votes cast here on the other side of this alley upon that preliminary question. Give us the premises of the powers of the two Houses of Congress under the Constitution that are not disputed here—I mean the general powers—give us the constitution of the departments; give us the arrangements of law regulating the action of these departments; give us the fact that the papers we seek for are in the possession of the Department of Justice and the Attorney-General can lay his hand upon them, and then after that a peremptory instruction of the President can follow out these deposits and select from them those that are suitable for the inspection of the Houses; let it be conceded that it is not thus to be arbitrarily, thus capriciously, thus undutifully, discharged by the President in this preliminary authority; let it be agreed that he means to send to the two Houses all that are useful and pertinent to every public use, how do you by that proposition but advance the most monstrous doctrine—

I call the attention of Senators to the language of Mr. Evarts in this connection—

under the Constitution that the President is the judge of what the duty of the two Houses of Congress relates to, and the further question of what the papers would have to say and to show and to decide whether they were or were not important and interesting to the two Houses of Congress on the very matters that the Congress has authority over.

I have here the speech made in that debate by Senator Logan, from which I now read some extracts:

If the people, through their representatives, can not have access to the records of the country, on the general theory that they are the source of power, when such records or documents are requested to aid in the performance of a duty incumbent upon them in their coordinate capacity, where is such a theory to carry us if it is followed up? We have been told for years by our opponents that the concentration of power was one of our objects, that our theories, as well as the character of our legislation, proved this to be the design of our party, that this had been increasing and growing from year to year, that the power of the Government was being placed in the hands of the few, that the people were being stripped of their power day by day.

I should like for any Senator to tell me what greater concentration of power has been shown during the existence of this Government than the attempt made by the President of the United States to take into his own hands the right to allow or not the people of this country through their representatives to examine public records, documents, and papers as he sees proper. Suppose the man guilty of fraud; suppose he has been guilty of embezzlement; suppose he is charged with any offense, will the President of the United States say, when we send for the papers to examine into the conduct of his office to see how it has been managed, because he has suspended this man the Congress of the United States shall not examine the papers? Will you say that? Suppose the Senate of the United States organizes a committee of investigation to-day and calls upon the President of the United States, the Attorney-General, the Secretary of the Treasury, the Postmaster-General, or any other head of a department, for papers in connection with the case either for or against the man accused, will it be said that the Senate of the United States can not have those papers? If so, why refused? Would it be on the ground that they are private documents? Is that the ground?

If this theory is to be carried out, the head of a department might suppress papers that would convict his friends; he might suppress papers that would convict criminals; he might suppress papers that would convict himself if he be corrupt enough, and this merely upon the ground that they were private papers and could not be given out. Suppose papers charging men with violations of law, charging them with robbery, with theft, with murder, with arson, no matter what crime, came to the Secretary of the Treasury as a letter directed to him making these charges, because the letter is written to him and not officially, but is filed with the papers in the archives of the Government, when the Senate calls on him for those papers he says, "It is a private letter. I shall not give it to the Senate or the Congress of the United States," though on the files. Would not that be covering up crime under the guise of private papers on the ground that they will not deliver documents to the Congress of the United States that might involve in criminal proceedings some individual who happens to be an official of the Government and friend of the Secretary?

* * * * * * *

I do not know what is to be the final result of this question. "You may pass these resolutions," said a Senator yesterday, "but when you do that, what have you accomplished? You can not force the President to send these papers."

Well, sir, that is true; with a House of Representatives against the theory that we act upon, there is no remedy for the present; but we can do this, and we will do it; we will bring the fact to the minds of the American people that no man can be a Cæsar in this country; that this is a Government where the people can and will be heard. It may be deferred for a short time, but only for a short time. When the people are or ever have been heard in reference to questions where unwarranted power has been attempted by anyone in this Government, the

people have always repudiated the exercise of that unwarranted power, and I believe they ever will.

Senator George, justly estimated as one of the most learned lawyers of his day, in his speech in that debate used this language:

Still, the obligation of the President to uncover, to make known his thoughts and actions, and what he does in his great office, and the reasons for what he does, is to the American people and not to the American Senate, unless in cases in which the Senate may need information to enable it to perform rightly a constitutional duty.

The learned Senator by that plainly implied that where the information was needed by the Senate to perform rightly its constitutional duty, it is necessary and mandatory that the President and, necessarily, each head of a department should, in the language of the Senator, uncover and disclose everything which may be required.

Mr. Sherman in that debate said:

That we have a right to call for information of any kind whatever in any *department of* the Government, whether it be by written order or by parol, I do not think there is the slightest doubt. Indeed, but for that we could not legislate; but for that we could not act wisely in executive session.

I read now something from what was said in that debate by Senator Edmunds, everywhere recognized as one of the greatest lawyers who ever sat in this body:

Mr. President—

This is Mr. Edmunds from whom I now quote—

Mr. President, the calm and orderly administration of a constitutional government is the subject in which the Senate and the House of Representatives and the President of the United States and the people are all equally interested, and for which they are all, in their respective stations and places, equally responsible. It is in support of that calm and orderly and constitutional exercise of the function of government that I now address myself to these resolutions.

It has been at least forty years since any occasion of this kind has arisen between the executive department of the Government and the Senate; and when a little more than forty years ago a similar but not the same question arose, it had then been a long time before that any such question, or any question like it, had engaged the attention of the Senate or the House of Representatives or the people; for the instances in which there has been evinced the slightest reluctance on the part either of the Executive or the heads of departments to respond to the calls of either House or of their committees for papers in possession either of the Executive or of the departments have been very few indeed. Sometimes in a case of political fever, as it might be called, there have been evinced, wide years apart, a reluctance and a hesitation on the part of the Executive or of the heads of departments to do this thing; and then, that storm being over, the orderly administration of constitutional government went on as before, and either House of Congress on its request or demand, as the case might be, and the committees of either House of Congress acting without a direct and positive authority to send for persons and papers, have always obtained from the departments on their mere request everything that either House or its committees thought necessary for the proper discharge of their duties.

Continuing, Mr. Edmunds says:

The question is whether, on the theory of the Attorney-General or the President of the United States or the minority of this committee, official papers in the Department of Justice bearing upon the administration of the officer that we are asked to remove are relevant to the subject.

I take it there is but one answer to that, although I should say here by way of parenthesis, lest I should forget it by and by, that I do not admit and I do not think any Member of the Senate will admit that the question of the relevancy of official information that we think we need and call for depends upon anybody's judgment but our own.

There is the whole thing in a nutshell. The Senate is the judge of what it needs, and when it has determined what it needs, neither the President nor the head of any department has the right to refuse to give what it demands.

I do not think the warmest administration man on the other side would say, take it year in and year out, decade in and decade out, and century in and century out, that it is any part of the constitutional or legal or other mission of the President of the United States or any head of a department to determine whether official information that exists in the departments and is desired by either House of Congress is to be sent or not, according to his opinion whether it will be useful to them or relevant to their deliberations. I think I am safe in saying that.

In other words, Mr. Edmunds scouts the idea that it is possible that the power rests in the President or in the head of a department to determine whether, when Congress demands any information, it is a legitimate demand and whether Congress has a legitimate use for the information desired. That is a matter for Congress to determine, and not for either the President or the head of a department. Mr. Edmunds absolutely scouts the idea that the contrary of that proposiion could be maintained or recognized for a moment.

Have we got to the point where we can know nothing about the operations of this Government—because all its operations are executive and neither House of Congress has any executive power at all; it only makes laws or the Senate advises treaties and advises appointments; all the operations of the Government are executive, every one of them; and have we come to the day that inasmuch as the President of the United States is the Chief Executive and on his constitutional responsibility must see that the laws are faithfully executed, neither House of Congress can know anything of the facts and circumstances relating to the execution of the laws, because, if they did, they might be able to comprehend the motives and reasons of the President in carrying those laws into execution? Such a statement is shocking, and yet that is the logic of the whole thing, and it is the statement of it in the letter of the Attorney-General, and in the message of the President of the United States, and in the report of the minority of this committee, that however important this official information which exists in the Department of Justice may be to knowing the truth about this case and in other cases, the truth about all others, it can not be given to a branch of the Government that is to act upon the subject, because, if given, the private motives or official motives or reasons of the Executive might be guessed at or known.

Thus said Senator Edmunds, absolutely scouting the idea that such a proposition for a moment could be entertained in the Senate of the United States and recognized as a correct statement of law. He winds up that particular part of it by saying:

That would be the end of all information.

It would seem from what he said in this memorable debate that this great Senator, this acknowledged preeminent constitutional lawyer, thought the Senate, and the House as well, within its sphere, entitled to know upon its demand not only every fact within the knowledge of a department, but also something in regard to the motives and reasons of the officers of the department in their action, or in their nonaction, in the performance of the official duties which the laws enacted by Congress imposed upon them.

Senator Edmunds continued, and I quote him somewhat at length, because he was chairman of the committee and his speech is exhaustive and demonstrates the proposition beyond possibility of logical refutation:

The jurisdiction of the Senate and the House of Representatives, composing the Congress of the United States, is just as broad, aye, even broader than that of the President of the United States. He is an officer to execute law, nothing else. The executive power is vested in a President of the United States, and he is to swear that he will faithfully see to it that the laws are executed. He is not the maker of law, he is not the maker of war or the maker of peace, without the consent of the Houses.

Their jurisdiction is infinitely broader than his, and when the Constitution of the United States commanded him in affirmative terms to from time to time give Congress information of the state of the Union—he shall do it, says the Constitution—it had reference to the universal power of knowledge and information of the two Houses of Congress in respect of every operation of the Government of the United States and every one of its officers, foreign and domestic.

That is "the state of the Union." The "state of the Union" is made up of every drop in the bucket of the execution of every law and the performance of every office under the law, either within its borders or out of it. There is no one mass, no one cue, or quantity, or subject that makes up "the state of the Union," as every gentleman—and there are a good many here who have been Members of the House of Representatives—when they go into the Committee of the Whole on the state of the Union, knows. It is the condition of the Government and every part of it, not only its legislative part, about which the President of the United States could communicate no information without impertinence, for the Constitution, has declared that the two Houses are to regulate themselves, but he is to give to Congress, as a positive command, from time to time information on the state of the Union; and that is because they are entitled to have it, and they are entitled to have it every time they call for it, and he violates a positive command of the Constitution when on a constitutional call and in a regular way by either House he omits to do it.

That is the reason why, since the beginning of the Government, from its earliest day until now, when either House, in calling for information, feels that there may be a question as to the public interests being involved in undue and early disclosures of some confidential fact which they are entitled to know, they then usually leave it to the President to send the information, just then or not, according to his judgment as to whether the public interest will be preserved or injured by its being done then.

So, going more broadly than the limitation of the minority of the committee, and speaking for a government of law and a government of the people, I maintain that either House of Congress has a right to know everything that is in the executive departments of the Government. I will state the extremest case possible, and that is either House calling on the President or the Secretary of State for information as to the disbursement of the contingent fund for the payment of the expenses of foreign intercourse, which is ordinarily called the secret-service fund. There is the money of the people from the Treasury appropriated under a law which says that a voucher of the President of the United States shall be good with the accounting officers of the Treasury that the money has been properly expended, while in the State Department are the real vouchers which show whether the money has been expended for one purpose or another, or if there be no voucher and no money, which would show, of course, by a simple proposition in arithmetic and common sense, that it had been embezzled.

Suppose some President of the United States two or three years ago, when I believe we appropriated one or two or three hundred thousand dollars, a very large sum of money, for the contingent expenses of foreign intercourse, not long preceding a great political election, should have turned into the Treasury a lump voucher for that whole hundred or two hundred thousand dollars, whatever the amount was. Suppose at the next meeting of the Senate or the House of Representatives they should be of opinion that for the security of good government and as a guard against any corruption and improper use of that money it was necessary that they should know what had become of it, would it be within the power of the Secretary of State or the President of the United States to say no? If so, we had better be extremely careful hereafter as to how much money we put into the contingent fund for foreign intercourse, if it is a sealed book to the two Houses of Congress. Nobody has yet ever contended that it was, and there is an instance which I shall show to you as illustrating the extremest case that can be stated ,where a Democratic Senate of the United States, if that makes it any better, though I do not think it does, called for that very information, as to what sum of money, how it had been expended by a particular private and secret agent of the United States in another country, and they got it. But, to be sure, the age of reform had not come in. The improvement in public methods, so far as we have yet gone, would

seem to be chiefly and most conspicuously the suppression and concealment of public papers, with the best intentions undoubtedly; but I repeat, for the first time in forty years and more, so far as I have been able to discover, has either House failed on its call to get the information that it has asked for from the public departments of the Government.

Upon the question of the authority of the President to direct the heads of departments I cite one other extract from the report of the committee signed by each of these great constitutional lawyers of the majority of the committee:

Your committee is unable to discover, either in the original act of 1789 creating the office of Attorney-General, or in the act of 1870 creating the Department of Justice, any provision which makes the Attorney-General of the United States in any sense the servant of or controlled by the Executive in the performance of the duties imputed to him by law or the nature of his office. It is true that in the creation of the Department of State, of War, and of the Navy it was provided in substance that these Secretaries should perform such duties as should from time to time be enjoined upon them by the President, and should conduct the business of their departments in such manner as the President should direct, but the committee does not think it important to the main question under consideration that such direction is not to be found in the statute creating the Department of Justice, for it is thought it must be obvious that the authority intrusted by the statute in these cases to the President to direct and control the performance of duties was only a superintending authority to regulate the performance of the duties that the law required, and not to require the performance of duties that the laws had not devolved upon the heads of departments, and not to dispense with or forbid the performance of such duties according as it might suit the discretion or the fancy of the Executive. The Executive is bound by the Constitution and by his oath to take care that the laws be faithfully executed, and he is himself as much bound by the regulations of law as the humblest officer in the service of the United States, and he can not have authority to undertake to faithfully execute the laws, whether applied to his own special functions or those of the Departments created by law, otherwise than by causing, so far as he lawfully may, and by lawful methods, the heads of departments and other officers of the United States to do the duties which the law, and not his will, has imputed to them.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Rhode Island?

Mr. BACON. Certainly.

Mr. ALDRICH. Does the Senator from Georgia agree with the sentiments which were uttered by Senator Edmunds?

Mr. BACON. I do, undoubtedly.

Mr. ALDRICH. Do the Senators upon the other side of the Chamber generally agree to that?

Mr. BACON. I can not speak for anybody but myself, but I have sufficient confidence in them to believe that they do.

Mr. ALDRICH. Judging by the RECORD, some of them do not.

Mr. BACON. I do not know to what the Senator refers.

Mr. ALDRICH. I refer to the debate which——

Mr. BACON. You mean the sentiments in this case?

Mr. ALDRICH. In cases similar to it.

Mr. BACON. The Senator refers to the controversy that was then before the Senate. I thought the Senator was referring to Senators here at the present day. If the Senator is referring to the question at issue between the Democratic and Republican Senators in 1885 or 1886, when this controversy was had, of course that is different. I have a different answer to the question, if that is what the Senator refers to. But, as I have already shown, while the honorable Senator was not in the Chamber, the Democratic Senators and the Republican Senators all agreed in that debate on the fundamental principle for which I now contend.

Mr. ALDRICH. It was at that time more or less a partisan discussion upon which the Senate divided, I think, equally. I think the Senate divided upon party lines equally.

Mr. BACON. They did not divide on that question at all.

Mr. ALDRICH. Pretty nearly.

Mr. BACON. Not at all. They absolutely agreed upon the fundamental proposition, and in the very speech of Senator Edmunds, from which I am reading, I have already read what he quoted from the minority report to show that they did agree upon the fundamental proposition that every paper and all information within the possession of a department which the Senate had need for in the exercise of its constitutional functions could be demanded by the Senate, not requested, and that it would be the duty of a department to furnish it. Both sides agreed on that.

Mr. ALDRICH. Does the Senator contend that the House of Representatives, for instance, could call on the President of the United States for correspondence between our Executive and a foreign government in diplomatic negotiations between the President and the representative of a foreign government?

Mr. BACON. Certainly not. The Senate can do that, not the House. The House can not, because it is not within its constitutional functions; but the Senate can, because it is within its constitutional functions.

Mr. ALDRICH. The Senate has nothing to do with diplomatic negotiations.

Mr. BACON. That opens a very wide question, and one that it would not be possible now to debate. I will state to the Senator that I did once have the opportunity to debate that question, and the former Senator from Wisconsin, Mr. Spooner, and myself, in common parlance, thrashed it out here for two or three days. I think it can be abundantly shown that, while the Senate can not require the President to enter upon any negotiations, it is within the proper functions of the Senate to advise the President as to negotiations before he enters upon them if it sees proper to do so, and it has repeatedly done so. Not only so, but the President of the United States in more than one instance has himself advised with the Senate officially and as a body before he entered upon certain negotiations.

Not only so, but during all the period from the foundation of the Government it has been the custom of Secretaries of State to advise individually with Senators. But, as I say, it is a very broad question that the Senator asked me, which I can not now enter upon without abandoning the discussion upon which I am now engaged. I only throw that out. As suggested to me by my distinguished friend, the Senator from Mississippi [Mr. MONEY], Washington came personally and took the opinion and advice of the Senate. There is one particular and very noted instance in the diplomatic history of the Government where the President of the United States, desiring to enter upon certain diplomatic negotiations, appointed commissioners and sent their names to the Senate to be confirmed before they entered upon any negotiations. I could go on for some time with that, but it is manifestly outside the line of my present argument.

Mr. ALDRICH. I do not desire to interrupt the Senator, but I suppose he will admit that that action was entirely voluntary on the part of the President.

Mr. BACON. Voluntary, but none the less proper. We can not require the President of the United States to enter upon negotiations. We can advise him that we think he should do so, and it is not improper that we should. In the same way the President himself may take counsel with the Senate before he proceeds with negotiations. But I do not see the pertinency of that question to the particular line that I am now trying in my feeble way to present to the Senate.

Mr. ALDRICH. It has no pertinency except that I was desirous of finding out the exact contention of the Senator from Georgia and its full extent.

Mr. BACON. The contention that I make is, if the Senator wants to know it in one sentence, that the Senate of the United States, in the consideration of any matter within its constitutional jurisdiction or for the performance of any duty within its constitutional jurisdiction, has the right, not to request, but to require and direct any department of the Government to furnish to the Senate any paper or any information which it may have relative to the matter.

Mr. HALE. Let me ask the Senator a question.

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Maine?

Mr. BACON. I do.

Mr. HALE. Has the Senator any doubt that under the Constitution—I will not go beyond that—the Senate has that right?

Mr. BACON. None, whatever; not a particle.

Mr. HALE. I agree fully with the Senator.

Mr. BACON. Mr. President, I want to say to the distinguished and honorable Senator from Maine that if I had any doubt about it, it would be impossible for me to read the debate, from which I have given only a few extracts, without being convinced beyond the shadow of a doubt of the truth of the proposition in its broadest and most radical aspect that it is not for the Senate of the United States (and it is true also of the House as to matters within their jurisdiction) to go to a department and request that it be furnished with certain information. A request if limited to a request implies the right to refuse. A direction or a command implies the right to have an answer without a refusal, and that is what I say is the power of the Senate.

Mr. TILLMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from South Carolina?

Mr. BACON. I do.

Mr. TILLMAN. When the Senate in addressing the President for information uses the words, "if in his opinion it is not incompatible with the public interests," it recognizes his discretion in certain cases.

Mr. BACON. So far as those words are concerned which the Senator from South Carolina quotes, they are the words of courtesy which we address always to the President, even where we think we have the absolute right. They are the words of caution which we address to the President when we deal with

matters where we recognize that possibly and even probably it may not be proper that the fact should be disclosed to the public. And especially is this invariably recognized by the Senate whenever the inquiry thus addressed to the President relates to matters concerning our foreign relations. And for this reason the inquiries relating to foreign affairs are usually addressed to the President, and not to the Secretary of State, and are couched in this language, putting it in the discretion of the President.

Mr. TILLMAN. But we always direct the heads of departments.

Mr. BACON. Of course, I am trying to say that much myself, and to contend for the power and right to do so.

Mr. President, what does it mean? What does it mean if we have not the right to require, to command? What are the departments? Where do they originate, and by whose power and by whose authority do they continue to exercise their functions? When the Government was formed there were no departments. The Constitution of the United States did not create any departments. The Constitution of the United States makes but one mention of departments. It says that the President of the United States—

> May require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices.

That is the only time they are mentioned in the Constitution of the United States, excepting where it is said in the succeeding section that Congress may vest in the heads of departments the appointment of certain inferior officers.

Here is a Government formed, a Constitution which creates the two legislative branches of the Government, which creates the executive head of the Government, which creates the Supreme Court, and there are provided in the Constitution no other departments of the Government and no machinery for carrying out the governmental functions which are going to be necessarily performed, but all that is left for the subsequent constructive work of Congress. Congress, in pursuance of its legislative functions, as designed and intended by the Constitution, enacts laws creating these departments for the purpose of executing the laws. And this is the way, and the only way, in which these departments have come into existence. Can it be conceived for a moment that over a hundred years ago, when these departments, or most of them, were organized, when Congress was considering what powers should be conferred upon the departments, it was for a moment suspected or imagined that the time would ever come that these departments thus being created by Congress should grow into such power that they should say to their creator, "You shall not even inquire as to how I am discharging the duties which you devolve upon me?" And when I say "inquire" I mean "demand."

As I was saying a moment ago, a request, if limited to a request, implies the right to refuse. A command recognizes the right or the obligation of obedience without the right to refuse.

Consider for a moment the condition of affairs if it be true that a department can shut its door and say to a legislative branch——

Mr. FULTON rose.

Mr. BACON. The Senator will pardon me for a moment. I will not yield now; I will a little later.

Mr. FULTON. Very well.

Mr. BACON. Consider for a moment the condition of affairs if an executive department can shut its doors and say to Congress, or to either the Senate or the House, "I will open them when I think they ought to be opened, and I will keep them shut to your demand whenever in my judgment they ought to be closed." We are speaking now not of what they are apt to do, but on the question of their power to do. What could they do under that power? Could they not absolutely block the wheels of Government? Could the House of Representatives or the Senate perform its legislative functions if the departments should exercise such a power? And if they have the power, they can exercise it. If the departments should exercise the power and say, "I will not let you have any information except, in my judgment, it is information which you ought to have," and if they should exercise that power in the extreme, to such an extent that Congress would not have the information necessary to know whether the functions of government were being properly exercised by them or not, what becomes of the legislative branch of the Government, and how are its functions to be performed?

If the President of the United States himself can do it—if the President of the United States can lock the doors of a department and say to Congress:

> You shall have information if I deem it proper that you shall have it, and shall not have it if I am of the opinion it is unreasonable.

What is the result? Manifestly in the exercise of such powers he would be an irresponsible autocrat and the design of the Constitution in creating a representative republic would be utterly defeated. Mr. President, the Congress of the United States is clothed by the Constitution of the United States with the greatest of all powers. The President of the United States is clothed with but one royal power to be exercised by himself alone, and that is the pardoning power. Every other power which he has is exercised either in connection with Congress or with the Senate. He can enact no law. He can make no treaty or appoint any officer of the Government, from a second lieutenant to the Chief Justice of the Supreme Court, without the consent of the Senate. Sir, let me refresh the memory of Senators and of the country in reading the enumeration of the great powers conferred by the Constitution upon Congress. The first line in the first article of the Constitution is as follows:

> All legislative powers herein granted shall be vested in a Congress of the United States.

And then section 8 of Article I proceeds to enumerate those powers, as follows:

> SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;
>
> To borrow money on the credit of the United States;
>
> To regulate commerce with foreign nations and among the several States, and with the Indian tribes;
>
> To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
>
> To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
>
> To provide for the punishment of counterfeiting the securities and current coin of the United States;
>
> To establish post-offices and post-roads;
>
> To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
>
> To constitute tribunals inferior to the Supreme Court;
>
> To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;
>
> To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
>
> To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
>
> To provide and maintain a navy;
>
> To make rules for the government and regulation of the land and naval forces;
>
> To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;
>
> To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
>
> To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding 10 miles square)—

Referring to the District of Columbia—

> as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

And finally, as if all this enumeration of powers was not sufficient, the Constitution continues, as the conclusion and summary of all these great powers:

> To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Nor is this all. The Congress of the United States, in one branch as an accuser and the other as a court, can try any officer in the United States and remove him from office, including the President himself. If it be true that the President of the United States can lock the doors of a department and say, "I will only open them when I wish," the great function of Congress, the great power of Congress to impeach and remove a President or any head of a department from office for malfeasance in office would be defeated. If the Congress of the United States, or rather, if the House of Representatives, were satisfied of corruption in a department with the connivance of an Executive (of course I am not speaking of any present officers) and desired to get information upon which to base articles of impeachment, and the contention of some Senators who have interrupted me here to-day is correct, denying to either House of Congress the right to have the doors opened upon their demand, and only conceding the right to request and only to secure it with the voluntary permission of the Executive, the President of the United States could in such case lock the doors of a department in which corruption existed and say, "You shall not come in to make an investigation." If it would be lawful for the President to do so, there would be no remedy. That would defeat the impeachment.

It will not do to say that it would be an impeachable offense for the President thus to lock the doors and deny admission to the House, because if it is lawful for him to lock the doors he could not be impeached for doing that lawful act. Extreme cases prove the law, and this is an extreme case, of course, an absolutely improbable case, but nevertheless it proves the law—that it is inconsistent with the exercise of the constitutional functions of either the Senate or the House for a moment to admit that there is any authority which can say "no," when either the Senate or the House demands to know anything which is in any department of the Government which relates to matters within the jurisdiction of such constitutional functions.

Mr. President, upon what possible basis can rest the contention of the President of the United States that the executive departments are subject to his direction, and not to the direction of the Senate in the exercise of its constitutional functions? Are the executive departments a part of the power included in that sentence in the Constitution which says that the "executive power shall be vested in a President of the United States?" Is the executive power one which covers and extends over the powers exercised by the heads of the departments? Most assuredly not.

The executive power as conferred upon the President by the Constitution of the United States can not be added to by the Congress of the United States nor can it be subtracted from. It is there intact and complete; it can be neither added to nor taken from.

How do the executive departments get their power? Where do they get their authority? From the President? From the grant of power under the Constitution to the President that he shall exercise executive power? If so, then the President of the United States undoubtedly has a right to the creation of these departments, and Congress has no such right. If so, the President undoubtedly has the right to say what departments shall exist and what departments shall not exist. If so, the President has the right to say what shall be the functions of each executive department, what they shall do, and what they shall not. Does any man for a moment contend that?

Nor, Mr. President, is it true that in conferring the power upon the executive departments Congress has, in so doing, taken away in any degree from the President of the United States the executive power conferred upon him by the Constitution of the United States, because if that were true, Congress could chip away one part of the executive power by the creation of one department, and then it could chip away another part of the executive power by the creation of another department, and so on until all the executive power of the President of the United States was destroyed.

The truth is that neither proposition is correct. The executive power conferred by the Constitution of the United States does not relate to the powers of the executive departments, because if it did, as I have said, they would be for his creation and not for the creation of Congress. On the other hand, the creation of the executive departments by Congress does not trench in any manner upon the executive power of the President, because, if it did, it would be within the power of Congress to absolutely destroy the power of the Executive.

Thus it stands. The executive departments are created by Congress. They are in their essence created by Congress. They are in all their powers created by Congress. It is for Congress to maintain them in the exercise of their present powers. It is for Congress to take away any part it may see fit of their present powers, and it is equally for Congress, if it sees proper, to add to any of their present powers. These departments are the very breath of the mouth of Congress. By a word Congress has created each and every one of them and conferred upon them without exception each and every power which they possess. By another word Congress can abolish any one of these departments and create another in its stead or confer its powers upon another department. Since I have been a member of the Senate Congress has created the Department of Commerce and Labor, in its creation conferring upon it each and every power which it possesses, and in doing so conferred upon it, among other powers, some of the powers which were for the purpose taken away from the Department of the Interior. And thus it has the unrestrained and unrestrainable power as to the creation or abolition of other departments or the changing of their powers and duties.

It is an impossible contention that a power absolute and unrestrained thus to create and to destroy, thus to change or to set up or to pull down at its will, does not carry with it the power of unlimited control; and equally impossible is the contention that the power thus to control does not carry with it the power to demand and receive all information within the possession of the department which may by Congress, or either House, be deemed within the sphere of its constitutional functions.

Congress is the authority to which the departments are responsible. They are also responsible, within the law, to the President for the proper discharge of their duties. It is his duty to see that they discharge their duties, because it is his duty to see to the execution of the laws. But it is none the less—nay, more; it is much more—the duty of Congress to supervise the workings of the departments and see that they do that which the law commands them to do and to see whether or not the law is sufficient for the purpose for which it was designed. If it can be that the President of the United States or the head of a department can stand at the door and say "no" when Congress makes a demand for information of any kind as to any matter connected with the discharge of the duties of that office, then the functions of the Senate in the discharge of its constitutional duties are practically destroyed. If it is a request, we are petitioners; if it is a command to be obeyed, then we occupy the position which the Constitution of the United States intended we should occupy, and we are discharging the duties and exercising the authority which its terms confer upon us.

The power of the President in directing the heads of departments is clearly stated in the majority report made by these great lawyers. It is the power, in their words, to direct—

> by lawful methods, the heads of departments and other officers of the United States to do the duties which the law, and not his will, has imputed to them.

Mr. President, there is no need of friction between the legislative and the executive departments on this question. While the power in the legislative department certainly and necessarily exists, either House of Congress can be relied upon, in the future as in the past, to exercise it wisely and with discretion; and whenever a direction is given which for any reason is unwise, it will be withdrawn whenever that unwisdom is properly shown.

Sir, I do not underestimate these departments, nor would I in any degree depreciate them or the distinguished officers who preside over them. They are great, stupendous departments, the agencies and the means by which all the complicated and vast machinery of this gigantic government is kept in successful action; and from the beginning of the Government in the very first administration of Washington, down to the present times, the ablest and the most illustrious men of the nation have esteemed themselves honored in being chosen as the heads of these great departments.

Mr. FULTON. Mr. President, the phase of the proposition about which I wish to ask has been discussed when I was absent from the Chamber, and I wish to ask the Senator regarding it, because he has studied it very carefully. Assuming that either House of Congress has the right, or that the Senate has the right, to demand this information—I am speaking of the right to do it, for in one sense I agree with the Senator that that is a correct proposition—but is that a right that can be enforced otherwise than by congressional legislation?

Mr. BACON. Enforced by congressional legislation?

Mr. FULTON. Well, by legislation—joint action.

Mr. BACON. The Senator means whether we have a right to demand it unless we have an act of Congress saying that the Senate may do so?

Mr. FULTON. We have no right; that is, we would have no power to enforce it except through that.

Mr. BACON. The question of enforcement is a matter of some difficulty. I will say to the Senator that Senator Logan, in the debate I have been quoting, discussed that very question. He seemed to concede the fact that there was no present or immediate remedy in case the head of a department or the President should refuse.

Mr. FULTON. Exactly.

Mr. BACON. But he seemed to think that the disclosure to the public of their refusal would have its proper rebuke and remedy at the hands of the people.

I will say to the Senator, in considering that question another suggestion has occurred to me, and that is, when the Senate orders the head of a department or any subordinate of that department to give certain information and he refuses to do so he is certainly in contempt of the Senate, and the Senate, in my opinion—I will not say "in my opinion," for I have not examined the law upon the subject, and so will not give it as a conclusion—but the impression on my mind is that the Senate could certainly deal with it as a matter of contempt. It could certainly deal with it in the matter of the payment of salaries, which would be a very efficient method of securing a recognition of our power.

Mr. FULTON. Certainly. But it seems to me doubtful whether the Senate could proceed as for contempt unless there should first be a statute of Congress so providing. However, I only make the suggestion.

Mr. BACON. If the Senator will pardon me, I do not think that that should be any reason why we should fail to recognize and insist upon the recognition of our prerogatives, not only of our prerogatives in the matter of pride and dignity, but of our prerogatives which are essential to the proper discharge of the functions which the Constitution devolves upon us, and which, as has been clearly shown, have been exercised for more than a hundred years. Why should we abandon them for fear some one would fail to obey the law?

Mr. FULTON. It seems to me it would be a right which would be a barren right if we have no way of enforcing it.

Mr. BACON. I do not think so. If that were the case, there are a great many things that are barren in the machinery of the Government. Suppose the Supreme Court of the United States, when a case was to be tried, should say, "We do not intend to hold any court this year," or "We do not intend to hold court for the next ten years." We could impeach them, but we could not compel them to do it. You might say that is a barren right. Of course I am illustrating by the most extreme and impossible case.

Mr. FULTON. I mean to go right back to my prior suggestion, that Congress may, by joint action of the two Houses, pass a law in order to make that a punishable offense.

Mr. BACON. Not only that, but Congress by the two Houses can impeach and remove from office, and in the same way Congress can impeach and remove one of these officers from his office.

Mr. FULTON. I only made the suggestion. It seems to me there is no doubt that Congress can provide by joint action for either House demanding and securing such information in all proper cases; but it seems to me probable that there is no remedy otherwise than that.

Mr. TILLMAN. Who would be the judge as to what are proper cases?

Mr. TELLER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Colorado?

Mr. BACON. I do.

Mr. TELLER. I should like to suggest to the Senator from Oregon [Mr. FULTON] that in several statutes we have already provided, for instance, as to the Secretary of the Treasury, that he shall make reports when called upon by Congress or by either House of Congress.

Mr. BACON. Mr. President, it is a well-recognized principle of law——

Mr. CULBERSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Texas?

Mr. BACON. I do.

Mr. CULBERSON. In addition to what the Senator from Colorado [Mr. TELLER] has just pointed out, I want to call attention to the last paragraph of section 8 of the act creating the Department of Commerce and Labor, which says:

He shall—

Referring to the Secretary—

He shall also, from time to time, make such special investigations and reports as he may be required to do by the President, or by either House of Congress, or which he himself may deem necessary and urgent.

That act was approved by the President of the United States who now holds that office. So, Mr. President, the Chief Executive is committed to the principle that the power exists to compel the head of a department to make special answers to inquiries of either House of Congress.

Mr. FULTON. That simply supports the view I expressed. That by legislative or joint action of the two Houses we can require information to be furnished, I have no doubt, because we can fix the penalty for refusal to comply. But without some such legislation it seems to me that it is hardly to be contended that, in the strict sense of right, it is a right any further than any right that may be put into legislation and through legislation enforced as a right. It is perhaps within the constitutional competency of Congress to provide for it; but it hardly strikes me as being thoroughly sound and logical to say that it is the right of the Senate to demand this, when all there is of it is that we have the power to legislate so that we can put ourselves in the position to demand it and secure it, but without legislation we may demand it but can not require it.

Mr. BACON. Mr. President, it is a well-recognized principle of law, known to everybody, that every function which is essential to the execution of power which is conferred upon a body is a function which it has the right to exercise without any further legislative authority. The principle is well stated in the minority report, as follows:

It is on this clearly defined and well-founded constitutional principle that wherever any power is lodged by the Constitution all incidents follow such power that are necessary and proper to enable the custodian of it to carry it into execution.

We have got just as much authority now as we would have if there were a statute about it. The only thing that could be done would be to pass a law which would prescribe a penalty for failure to do it. But if Congress at every session should pass a law which should say that the Senate would have the right to require and demand this information in cases where the proper discharge of its constitutional functions required it, it would not give us any greater authority to require it and to demand it than we have under the Constitution when it imposes upon us the legislative function.

Mr. FULTON. That simply means that we have a right to demand, but we have no power to compel compliance with the demand.

Mr. BACON. I will concede, if the Senator will be satisfied with that, that we have no power to enforce it, though I do not think he is right, but I will concede it for the argument. There is certainly the power of impeachment which the House could set in motion. But even if there were no power of enforcement, that is no reason why we should surrender a great constitutional right, not of a theoretical character, but of a most practical and fundamental character.

Mr. FULTON. I agree with the Senator.

Mr. BACON. Then why does the Senator disagree?

Mr. FULTON. I do not mean it offensively, but I will say that, on the part of the Senator, I think it is idle to attempt to prove that this is a right, when we must admit that we have no way of enforcing it. My idea is that we may provide a way of enforcing these rights.

Mr. BACON. I will remit that part of it to the honorable Senator from Oregon. I myself am content to have it remain as it is.

Now, an important fact to which I want to call the attention of the Senate is this: The President of the United States says that there are but three powers which can direct an executive officer. One is the President of the United States, another is the Constitution of the United States, and the third is the Congress of the United States. That denies to either House of Congress the right to issue a direction to a department. On the one side of this constitutional question stands the present President of the United States. On the other side, as shown by this report in which instances are cited that from the foundation of the Government the contrary has been recognized as the law, stands the great array of Senators who have sat in this and in the other Chamber for a hundred years or more—the greatest names that ornament the history of the United States—Senators who, during that more than a century, have acted upon the correctness of that proposition and have directed the departments and have not requested them.

Why, I remember, Mr. President, one of the first things which I heard when I came into the Senate of the United States, about fourteen years ago, was a suggestion by Mr. Sherman, of Ohio, who was sitting, I think, right where the honorable Senator from California [Mr. PERKINS] now sits—or the seat in front of him, I have forgotten which, but in that immediate neighborhood—when some Senator, like myself, who had recently come into the body, introduced a resolution requesting a department to furnish certain information. Senator Sherman, who himself had been a distinguished member of the Cabinet, rose in his place and moved to amend the resolution—no; asked for an amendment; he did not move it, because no action was necessary—to strike out the word "requested" and insert "directed." It was done in that instance, and I have seen him do it a dozen times in the Senate. Not only so—and I mention that simply as a matter within my personal observation—but, as shown by this report, it had been the custom of the Senate for more than a hundred years to use the word "direct." Was it an idle exercise of boastful power or pretended power on the part of those great Senators, or were they using the word advisedly because they knew they had the right to use it? When the President of the United States uses such language as this:

Heads of the executive departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever.

I put against his word and his opinion the utterances and the practices of the illustrious men who for over one hundred years have ornamented the Senate—constitutional lawyers, the superiors of whom in many instances have not been known to the American bar. Mr. President, in this most learned report and in this great debate those great Senators recognized the

fact that this was a vital question; that it was a question which related to the proper discharge of their constitutional duties; that it was a question which related to the ultimate, absolute control of the Government by the executive power or the executive officer and the absorption to himself of all power, and they set out in their report something upon this line which I will trespass a little further upon the Senate to read. It is upon the question as to whether or not the exercise of unlimited power by the President of the United States to shut up the doors of the departments, to lock them and to say to Congress, "You shall not enter except when I will," armed him with power which would, in connection with the control of great patronage, ultimately lead to despotism and autocracy.

In the appendix to their report, in discussing this very question, they said some things about the power of the Executive in dispensing patronage and about the encroachment of the Executive upon other departments of the Government, which, though spoken in 1826, would be quite applicable to the conditions of the present day:

> In 1826 Mr. Benton made a report to the Senate, embracing in part this subject, which ought to be carefully read by every American—

This, now mark you, Mr. President, is what is brought to the attention of the Senate by George F. Edmunds, Mr. Hoar, Mr. Evarts, Mr. McMillan, Mr. Ingalls, and Mr. Wilson, Republican members of the Judiciary Committee. This is what they themselves presented to the Senate:

> In 1826 Mr. Benton made a report to the Senate, embracing in part this subject, which ought to be carefully read by every American. In that paper we find this powerful passage: "The King of England is 'the fountain of honor;' the President of the United States is the source of patronage. He presides over the entire system of federal appointments, jobs, and contracts. He has power over the 'support' of the individuals who administer the system. He makes and unmakes them. He chooses from the circle of his friends and supporters and may dismiss them, and, upon all the principles of human actions, he will dismiss them as often as they disappoint his expectations. There may be exceptions, but the truth of the general rule is proved by the exception. The intended check and control of the Senate, without new constitutional or statutory provisions, will cease to operate. Patronage will penetrate this body, subdue its capacity of resistance, chain it to the car of power, and enable the President to rule as easily and much more securely with than without the nominal check of the Senate.
>
> If the President himself was the officer of the people, elected by them and responsible to them, there would be less danger from this concentration of all power in his hands; but it is the business of statesmen to act upon things as they are, and not as they would wish them to be. We must look forward to the time when the public revenue will be doubled; when the civil and military officers of the Government will be quadrupled; when its influence over individuals will be multiplied to an indefinite extent; when the nomination of the President can carry any man through the Senate, and his recommendation can carry any measure through the two Houses of Congress; when the principle of public action will be open and avowed—the President wants my vote, and I want his patronage; I will vote as he wishes, and he will give me the office I wish for. What will this be but the government of one man? And what is the government of one man but a monarchy? Names are nothing. The nature of a thing is in its substance, and the name soon accommodates itself to the substance.

Now, Senators may think that this has nothing to do with the question I am discussing; and yet those learned Senators thought that it had much to do with the discussion of the exact question which was then before the Senate—the right of the Senate to demand—not to ask, but to demand—and receive from the head of a department all information of every kind, documentary or otherwise.

Mr. President, the Senator from Texas [Mr. CULBERSON] has handed to me certain precedents. With the permission of the Senate I will include them in my remarks. They are precedents cited by this same committee in their report. I say that in response to the suggestion made by the Senator from Maine [Mr. HALE] when I first began.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Minnesota?

Mr. BACON. I do.

Mr. CLAPP. It does seem to me, with all due deference to the Senator, that that is the important matter. If we have precedents that are to form a part of this argument, I for one—and I believe many other Senators—will be very glad indeed to have the time taken for the presentation of that phase of the argument.

Mr. BACON. I will say to the Senator that throughout this debate, extracts from which I will include in the RECORD, there is a particular inclusion of all matters of information, everything which relates to the acts of the departments as contended for by those Senators.

Mr. CULBERSON. I will say to the Senator that the precedents are on page 7.

Mr. BACON. I will read two of them now——

Mr. TILLMAN. Will the Senator allow me to make a suggestion?

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from South Carolina?

Mr. BACON. Certainly.

Mr. TILLMAN. This is a matter of such vital importance to the Senate, collectively and individually, that I feel that the Senator would be warranted in taking—and I am sure I should be very glad indeed to have him take—the time in the morning to read the precedents and further discuss this question, so that, once for all, if it is possible, we may come to some clear understanding or conviction as to what are our powers and rights, and, if possible, set about obtaining them.

I hope the Senator will not be hurried to the conclusion of his speech and gloss things over, though he never intentionally glosses over anything; but he would necessarily be obliged to neglect to give us the meat and the essence of this argument if he should now conclude his speech and simply incorporate this, that, and the other precedent. Therefore he had better take the time to do so now. There is nothing so important, in my judgment, as the present situation between the Executive and the Senate, and I hope the Senator will either go on now and give us the full benefit of what he is going to say, or that he will take the time to do so to-morrow.

Mr. BACON. Mr. President, much that I have said many Senators have not heard. Unfortunately for me, the Senator from South Carolina has not been in the Chamber during all of my argument, and, therefore, he has not heard it all.

Mr. TILLMAN. Many Senators have not been in the Chamber.

Mr. BACON. That is the reason they have not heard it. I do not complain of it at all. I am simply saying that in response to the suggestion of the Senator from Minnesota [Mr. CLAPP] and also that of the Senator from South Carolina [Mr. TILLMAN]. There is much that I have gone over that does relate to the matters which are now suggested.

I think that this is a matter of such extreme importance that it ought to go to the Judiciary Committee. That would be much better than for me to continue to read to the Senate the opinions of others or to state opinions of my own, and I think that under the challenge made by the President of the United States it ought to go to the Judiciary Committee, and that the committee should report to the Senate what are our own rights in the matter—whether we are limited to requests or whether we are empowered to command.

Now, as to my continuing, in order to cover the ground the Senator suggests I should have to repeat very much of what I have already said.

Mr. TILLMAN. No. I have only suggested that the Senator read the precedents and comment upon them at such length as he deems proper.

Mr. BACON. I can not go over the same ground again. I have practically gone over it, not citing the entire matter I intend to incorporate because it would take too long, and it is not necessary to go over it again. And as to the suggestion of the Senator with respect to its importance and that it should be settled by the Senate in an authoritative way, the only way is that the law committee of the body shall take it up and state what the powers of the Senate are in the matter. If I am wrong, I am perfectly content to abide by the judgment of the Judiciary Committee; and if I am right, I shall be more than gratified to be fortified by the views of that committee.

Mr. McCUMBER. Mr. President——

Mr. BACON. If the Senator from North Dakota will pardon me, I want to read what the Senator from Texas handed me, and then I will be through.

Mr. McCUMBER. I simply desire to ask the Senator, before he closes, a question concerning the construction of the language used by the President, because I wish to have his opinion upon it. What I wish to ask the Senator is whether or not, in his opinion, the last four lines in this paragraph, which say:

> Heads of executive departments are subject to the Constitution and to the laws passed by the Congress in pursuance of the Constitution and to the directions of the President of the United States, but to no other direction whatever—

should not be considered as limited by the preceding declaration, in which the President states:

> I feel bound, however, to add that I have instructed the Attorney-General not to respond to that portion of the resolution which calls for a statement of his reasons for nonaction.

Should we not consider that the statements made by the President—all of them—refer to that portion which calls for his reasons for nonaction and not that portion which demands papers or demands information? It seems to me that that is the only construction which can be placed upon it, although I admit that the words in closing are very broad and general. But I want the Senator's opinion on that proposition.

Mr. BACON. Mr. President, really the principal thing asked of the Attorney-General was his reason, because the fact was well known, although the form may have been whether he had or

had not instituted proceedings, that he had not, and it was the matter of reasons which was inquired into. If the President stopped with that sentence it would have conveyed the entire idea that he would wish to convey if the Senator's suggestion is correct that he was simply denying the right of the Senate to demand reasons. But when he goes further he not only includes his denial of the right of the Senate to demand reasons, but he denies the right of the Senate to make any demand whatever, because he uses language incapable of mistake. If he had used language which might be susceptible of the construction that he was referring to that, we might take that as the intention of the President. But he goes on to specify what powers have the right. Does the Senator understand that the President meant to say that the Constitution——

Mr. McCUMBER. Mr. President——

Mr. BACON. The Senator will pardon me until I get through.

Mr. McCUMBER. Certainly.

Mr. BACON. Does the Senator mean to say that he understands the President in what he says to say that the Constitution has the right to demand reasons, but the Senate has not the right to demand reasons, but could demand facts; that the Congress has the right to demand reasons, but the Senate has not the right to demand reasons, but could demand facts; that the President has the right to demand reasons, but the Senate has not the right to demand reasons, but could demand facts? That while the Senate can not demand reasons, it may demand information? No. In the last sentence he had not reasons alone in contemplation. He is speaking of the power to direct in any particular, and he not only denies the power of the Senate to direct in any particular, but specifically enumerates the powers which have the authority to direct, to wit, the Constitution of the United States, the Congress of the United States, and the President of the United States.

I will not stop to comment on the fact that the Constitution does not lay any commands on the heads of departments, because they are not known to the Constitution.

The Senator from Texas has called my attention to these precedents, and there are others, which I will read in response to the suggestion of the Senator from Minnesota. This is set out in this report:

On the 6th December, 1866, when there was much irritation existing between the Houses of Congress and the Executive, the House of Representatives adopted a resolution directing the Postmaster-General to communicate to the House information of all the postmasters removed from office between the 28th July, 1866, and said 6th of December, together with the reasons or causes of such removals, and the names of all persons appointed in their places, etc. This command—

It speaks of it as a command addressed to the Postmaster-General—

was on the 18th February, 1867, complied with by the Postmaster-General without, in the least degree, questioning the right of the House of Representatives to have that information.

Two instances occurring during the administration of President Hayes, under circumstances when there would be naturally a disposition on the part of the Executive to stand upon his constitutional rights, may be of interest. On the 9th January, 1879, the Senate passed a resolution directing the Secretary of the Treasury to transmit charges on file against the Supervising Inspector-General of Steamboats and the papers connected therewith; which was also promptly complied with.

At the same session a similar resolution called for papers on file in the Treasury Department "showing why—

Which is the same thing as giving the reasons—

Lieutenant Devereux was removed from the Revenue Marine Service," which was also complied with.

Mr. CLAPP. Will the Senator from Georgia pardon me?

Mr. BACON. Certainly.

Mr. CLAPP. I think there is a very plain line of demarcation between those cases and the broad proposition that we can require the reason for an act in the sense in which that term has been used in this discussion. In the post-office case the word "reason" was used there perhaps inadvertently, but in the same sense as "what were the complaints made." The inquiry made is, "What were the complaints made?" I do not think, having given only slight attention to this matter, that those two cases go to the point where we can fathom the motive of an executive officer by inquiry.

Mr. BACON. There is no ground upon which it could be contended that Congress could demand reasons of a department while the Senate could not demand reasons. In each case if the right to demand reasons exists, it is because the information is needed in the discharge of constitutional functions, and the constitutional function exists in the case of the Senate as surely and as completely as it exists in Congress.

Mr. HALE. Mr. President, before this important subject passes from the consideration of the Senate to-day I wish to say that I do not interpret the language the President has used at the end of his letter as committing him to the proposition that the Senate can not direct the heads of departments to communicate to the Senate information, documents, and papers on file in the departments required by the Senate in the course of its regular proceedings as a part of the legislative body of the Government; and I hope, Mr. President—and I think I may say I trust—that the Chief Magistrate of this Republic will not commit himself to that proposition. I for one am in complete accord with the proposition that it is not practicable for us to ransack the mind of an executive officer and demand from him the reason why he has or has not done a certain thing. I do not think that a feasible thing. I think it is going too far. I do not think it is needed in the quest in which the Senate is engaged to secure such information as may be the basis for proper and fitting action by this body.

But, Mr. President, if it shall ever be declared by any President that when the Senate, in dealing with legislation as a coordinate branch of the Government, as a part of the legislative branch, directs the head of a department to transmit papers and documents and information for the benefit of the Senate in that proper and legitimate quest, it is in his power and discretion to forbid it, it goes to the foundation of the right of this body to participate in legislation.

So vast is the domain of legislation and so correlated are the subjects between the different branches of the Government that there are but few great subjects upon which the Senate is not entitled to and needs information from the great departments of the Government. It can not legislate intelligently and satisfactorily unless it can call upon the departments for the information lodged in the archives of the departments. The great heads of departments are recognized by the Senate, which participates in their selection and confirms their appointments. They are a part of the entire Government, recognized not formally by, but under the operation of, the Constitution as a part of the Government. They are more than the head clerks of the President of the United States.

I do not sympathize with the proposition—I believe and hope it is not entertained in the mind of the President—that the heads of these great departments are to be lowered in their standing and their rank and are to be considered only as the head clerks of the President, and that when the Congress, the Senate, or the House directs information to help it in its action in legislating for the country the President can say, "These are my head clerks and I direct them to refuse this information."

Mr. President, I deprecate any such locking of horns on this great question. I do not agree with the Senator from Georgia [Mr. BACON] that the language of the President commits him to any such proposition. I do not believe that he will take that position. I do agree, as I have said, with the other proposition, and I think the bent and the purpose and the significance of the letter of the President dwell upon and surround the other proposition, of the right to call for reasons.

Only time will manifest how far this is to go. I think the Senator is wrong. I think he has put a forced construction upon the language of the President, and I hope and believe that we shall not be confronted with such a situation.

Mr. BACON. I should be very much gratified if the President would say that the construction put upon his language by the Senator from Maine [Mr. HALE] is correct. I do not think he will say so. If he will say so, I shall be content to let the matter rest; and if he had not used this language in the message, which in my opinion plainly and unmistakably implied the contrary, I should have said nothing.

I will say to the Senator from Maine and the Senate that the construction which I put upon it is the construction which has generally been put upon it. It has not only been put upon it by individuals but by the press.

I recollect that in this city a few days since one of the morning papers had an editorial upon the subject and applauded the President and commended him and approved him upon the ground that as the Senate had said that these departments should not of their own motion communicate directly with the Senate, but only through the President, it was nothing but right that no command should go from the Senate to the head of a department, but that all should go through the President.

Mr. HALE. Of course the Senator recognizes the distinction we have always maintained—and the Senate has been firm in it—that no Secretary can originate and send matter to the Senate?

Mr. BACON. I quite agree with that, of course.

Mr. HALE. That is another question.

Mr. BACON. I was speaking of the grounds upon which the editorial was based, recognizing, as it did, the language of the President to mean as I have construed it to mean.

Mr. HALE. But the other case, when the Senate directs that information be sent, presents an entirely distinct proposition.

Mr. BACON. I quite agree with the Senator; but I am calling attention to the fact that others do not agree with him upon the construction which he puts upon the President's language.

Mr. HALE. I hope——

Mr. BACON. And I repeat, I hope the Senator is correct in the construction he places upon the President's language.

Mr. HALE. I hope I am correct.

Mr. BACON. If he is correct, the trouble is removed.

I think, so far as the question of reasons is concerned, that is a minor matter, but all information is what we are entitled to, whether it is documentary or otherwise. Everything that is known to the departments we are entitled to know, and if there are reasons why a law is ineffective, why that which was designed by the law, to wit, the prevention of the suppression of competition and the prevention of monopoly, can not be attained, and why in a noted instance there has been no attempt to enforce the law, it is important that we should know it in order that we may correct any defects there may be in the law, if such defects there be.

Mr. TELLER. Mr. President, I do not intend at this late hour, and after the long debate, to discuss this question to any extent at least. I do not know whether the resolution will come up again soon, so that an opportunity will be afforded to be heard on it further. I believe it is not a special order. I believe it will go to the calendar if we do not act on it to-day. Does it not? I would ask, if it is in order, that it may lie on the table, to be called up at a subsequent time.

The VICE-PRESIDENT. The Senator from Colorado asks that the resolution submitted by the Senator from Georgia lie on the table, subject to call.

Mr. FULTON. Will that interfere with the special order?

The VICE-PRESIDENT. Without objection, it is so ordered.

Mr. TELLER. Mr. President, I will take occasion at some other time to express some opinions on this question. I recall very well the discussion which the Senator from Georgia [Mr. BACON] has brought out here, and I think I know what the distinction was between the minority and the majority. But there is no time to go into that to-night.

I desire to say just a word about what the Senator from Maine [Mr. HALE] has said, that the members of the President's Cabinet are not mere clerks. That may depend upon who is at the head of the Government——

Mr. TILLMAN. And who are under him.

Mr. TELLER. And what kind of men may be at the head of departments. That has been the rule heretofore, I admit. The President may give directions generally to his Cabinet as to what his policy is; not, I think, as to details, but as to the general policy of his administration, and very properly. I do not think any self-respecting Secretary would take orders from the President a great while. I do not think we have had a great many Secretaries who would.

There are conditions under which the head of a department is absolutely independent of the President. Whenever there is a statute directing the head of a department to do a certain thing, he is absolutely independent of, and can take no orders from the President. He must obey the statute. That is his chief. Up to the time when something of that kind occurs, of course there should be, and probably always will be, a conference and consideration between the head of the Government and the Secretary who has to act. Whenever there is a statute that directs him to do a certain thing, the Secretary or any other officer of the Government must do it, or he must answer why.

I do not understand that this resolution really calls for what we call "reasons." The resolution offered—I have just looked at it—does say what reasons he gives for not having brought the suit. If it had said, "Will you tell us why you did not bring the suit?" I suppose it would have been just as well, and it would not have been the reasons. I do not believe, where an officer of the Government exercises a discretionary power lodged with him, that the Senate or anybody else can ask him for his reasons. He can do as he sees fit. When it comes to the performance of a statutory duty, then I say we may call upon him to state why he did or why he did not. Ordinarily you would not have to ask him why he did, but why he did not do it. That is what in this case the Senator from Texas wants to know.

When there is an opportunity, I want to speak a little more fully on this subject. Precedents do not entirely govern anybody, and yet a very large proportion of the law of this country comes from precedents. All of the common law comes from precedents. In the very beginning of this Government the Senate and the House independently, without consulting, called on the heads of departments for reports. Committees of the Senate have from time to time called the heads of departments before them to tell them what they wanted to know about the departments. I do not believe in the whole history of the Senate you can find a case where any head of a department has declined to respond. Why? Because nobody supposed they were independent of Congress—and a committee is an agent of Congress; one branch, of course. We are only one branch of Congress. But if Congress has the right to call on them in order to facilitate legislation, then one branch of it ought to be able to call on them in order to complete and perfect its legislation, which it must do with the other branch.

Fifty-four years ago one of the ablest men that ever was Attorney-General of the United States, Caleb Cushing, settled, I think, although I will not read it, for it is too long, what was the duty of the heads of departments. He recognized in the most ample manner the right of each branch of Congress to call on the head of a department, and that he must respond. He afterwards became, as all know, somewhat noted in the country, and was always regarded as a great lawyer, one whose legal acumen and legal ability were recognized even by his political opponents. He was a great lawyer in the minds even of men who did not agree with him on important questions of public affairs.

I think a hundred times, when a resolution was presented requesting some officer of the Cabinet to report, I have seen a Senator rise and say "the Senate does not request anybody but the President; the Senate directs." I remember that within a very few weeks after I came into the Senate Senator Edmunds, sitting about where the Senator from Illinois [Mr. CULLOM] sits now, if I recollect correctly, with a good deal of dignity, when a question of that kind was presented, said emphatically, "The Senate never requests an officer to do anything; it commands."

Mr. HALE. Directs.

Mr. TELLER. Directs; and he moved to have it amended, and the word "direct" went into the resolution.

Mr. President, I have never forgotten that. I have myself again and again asked to have a resolution or whatever it might be amended so as to read "directed." That is worth something, at least as a precedent. I do not suppose there ever was a session of Congress in which we did not direct a department to furnish information. I hope, with the Senator from Maine, that the President does not intend what his words plainly import; that he does not intend to say that his heads of departments will not respond.

I want to say one word about what the Senator from Oregon has said—that we can not do anything about it. We have not had the power to do anything about it for more than a century. We have been doing it, and everybody has responded upon the theory that every man holding a public office will do his duty when called upon to do it. There has been no occasion to provide a penalty for one who has failed to reply. I know sometimes we have had delay in getting replies, but nobody has ever said before that they would not reply and no head of a department has said that yet.

Now, Mr. President, I am going to leave this matter, and when it comes up again I will want to say a few words upon it, more in the way of citing precedents than of making remarks.

Mr. HEYBURN. Mr. President, I wish to ask a question of the Senator from Colorado before he takes his seat. I should like to take advantage of this occasion to inquire if, in the judgment of the Senator from Colorado, all the communications addressed to the executive department of the Government should not properly be addressed to the President, and as to whether any communication is proper between the Senate of the United States or the Congress and any one less than the head of one of the coordinate branches of the Government.

Mr. TELLER. I will respond to that by saying that, whatever might be the ethics of the question originally, one hundred years and more have made it very reputable and respectable for the Senate of the United States to call upon a government officer. Perhaps in theory it would be true that we ought to ask the President, as the head of the executive branch of the Government, but we never did that, not even in the days when there was greater punctiliousness and greater feeling on the part of the President, at least, in the early days, as to his prerogatives. We never did it even then; but I do not think any President has ever complained of it at any time. So I can not answer what ought to have been done, but I can answer what has been done.

Mr. HEYBURN. I merely suggest that I have always been impressed with the idea, since I have been a member of this body, that communications from this coordinate branch of the Government ought to be addressed to the head of whatever coordinate branch of the Government the information is sought to be obtained from. It has always seemed to me that that should be the rule.

I have some doubt in my mind—I do not know that the question has been ultimately settled—as to the extent of the authority of Congress over a Cabinet officer. The term "Cabinet

officer" has no legal origin. They are not constitutional officers or officers under the Constitution of the United States. While in the Belknap trial the question would doubtless have been raised, it has not to my knowledge been determined that there is any power of impeachment over a Cabinet officer, because it is not an office created or contemplated by the Constitution.

Mr. TELLER. I should like to say to the Senator from Idaho that, leaving out the Belknap case—I will not touch that—we have in a hundred cases, at least, directed heads of departments by statute.

Mr. HEYBURN. I know the fact, but I was merely questioning the practice.

Mr. MONEY. Mr. President, there has been no effort made here or elsewhere to direct a Cabinet officer. He has been directed, as the head of an executive department. A man can be a Cabinet officer without being the head of an executive department. There is no law on the statute book which makes the Postmaster-General a member of the Cabinet of the President of the United States. What made that officer a member of the Cabinet? It was a note of three lines from General Jackson to Mr. Barry, then Postmaster-General, requiring him, or inviting him, to attend the Cabinet meeting the next day and thereafter. That made him a Cabinet officer.

Mr. HALE. He had never attended a Cabinet meeting before.

Mr. MONEY. He had never attended a Cabinet meeting before; and had never dreamed of attending one.

I want to say to the Senator from Idaho, the President can make every Assistant Attorney-General, every Assistant Postmaster-General, every Assistant Secretary of the Interior, or Assistant Secretary of the Treasury, or elsewhere, Cabinet offices if he chooses to call them into council.

Mr. TILLMAN. Even in the kitchen cabinet.

Mr. MONEY. He can make anybody who is not a member of one of the other coordinate branches of the Government a Cabinet officer. Nobody here is consulting or directing or requesting any Cabinet officer to do anything. He is the President's councilor, whom he chooses as he pleases.

Now, when it comes to an executive officer, that is an entirely different business. I am not going to continue this debate to supplement in any way the extremely able and lucid speech of the Senator from Georgia [Mr. BACON] or the brief and able and lucid speech of the Senator from Maine [Mr. HALE]. To my mind, there is a very substantial agreement between the Senator from Georgia and the Senator from Maine, because I think the Senator from Maine has somewhat confounded reasons with motives. When we ask an executive officer why he has not complied with the law, it is a perfectly pertinent question which we need to ask in the discharge of those functions which are devolved upon us by the Constitution. It is a legitimate inquiry which he is compelled to answer. It is made so by law. There is no inquiry into the motives that impelled him to decline his duty under the law; it is no search into his private reasons, but it is a demand for the public reasons that impelled him from the execution of the law devolved upon him.

I say, and I am glad to hear the Senator from Maine say, that there is no authority by the Constitution or the laws resting in the President of the United States to instruct any member of the Cabinet to withhold information of any sort demanded by the Senate or the House. These two bodies are absolutely independent and must perform their duty as they see it, not as it is seen by any head of a department or any head of the executive branch of the Government.

It may be said that it is extremely unfortunate that all men who seek public offices do not devote a little time to the study of the law. It would certainly teach some people some accuracy of thought and some precision of expression. There is so much slashing around through the whole vocabulary of words that we do not know half the time what is meant when we receive communications from certain quarters. It might be said that whenever the President of the United States—I speak it with great respect to that high office—proceeds to direct the head of a department not to respond to the direction for information from this body or from the other House—by the by, he says the "upper" and "lower" House—there is no such distinction in the phraseology of our Constitution or of our law—I say when he presumes or assumes to give such direction, it can be considered only as a misunderstanding of the language of the Constitution and the law or as a piece of official insolence. The Senate must respect itself. It must consider the great duty that has been devolved upon it by the Constitution. It must maintain its self-respect, not simply for its own sake, but because of the high duty it owes to the States that send its Members here and to the people represented by those States.

It would be impossible, Mr. President, for me to make things plainer than they have been made already, and I have only risen to say this much because it was called forth by the remark made by the Senator from Idaho, who unfortunately confuses Cabinet officers with heads of executive departments.

Mr. CULLOM. I move that the Senate proceed to the consideration of executive business.

Mr. HEYBURN. I want to understand the last remark of the Senator from Mississippi.

The VICE-PRESIDENT. Does the Senator from Illinois yield to the Senator from Idaho?

Mr. CULLOM. The Senator from Idaho wants to make some further inquiry, and I will yield to him. I withdraw the motion for a moment.

Mr. HEYBURN. I did not hear distinctly the closing remark of the Senator from Mississippi as to the question that I had raised.

Mr. MONEY. I said that my remark was only called forth by the fact that confusion seemed to exist in your mind as to whether this communication was addressed to a member of the Cabinet or to the head of an executive office. The things are entirely different.

Mr. HEYBURN. I did not mean to be understood quite within so close a limitation. The inquiry in my mind was as to whether it should be addressed to the President as the chief executive officer or to a subordinate under the President; and I suggested that there was a question as to our power to enforce an order against a Cabinet officer because of the failure of the power of impeachment or punishment in any way; that the test of our power is found in our ability to enforce our mandate; that was all.

Mr. MONEY. I understood the Senator.

Mr. HEYBURN. That is what I intended to bring out.

Mr. MONEY. I understood the language of the Senator, and it was that language which called forth my speech. You spoke of a Cabinet officer. We are talking about the head of an executive department.

Mr. HEYBURN. I said there is no such thing as a Cabinet officer under the law.

Mr. CULLOM. I withhold my motion, further, to give an opportunity to the Senator from West Virginia [Mr. SCOTT] to bring up a joint resolution.

INAUGURAL PERMITS.

Mr. SCOTT. At the urgent request of those in charge of the ceremonies for the inauguration on the 4th of March, I ask unanimous consent to call up Senate joint resolution 106.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. R. 106) authorizing the granting of permits to the committee on inaugural ceremonies on the occasion of the inauguration of the President-elect on March 4, 1909, etc.

The VICE-PRESIDENT. The joint resolution has been heretofore read as in Committee of the Whole. The Secretary will read the amendment reported by the Committee on the District of Columbia.

The SECRETARY. On page 1, line 8, after the word "regulations," the committee report to insert "and limitations as to space," so as to make the first section read:

That the Secretary of the Interior is hereby authorized and directed to grant a permit to the committee on inaugural ceremonies for the use of the Pension building in the city of Washington on the occasion of the inauguration of the President-elect on the 4th day of March, 1909, subject to such restrictions and regulations and limitations as to space as the said Secretary may prescribe in respect of the period and manner of such use, including all necessary safeguards against fire and for the extinguishing of fire.

The amendment was agreed to.

Mr. TELLER. Will not the Senator who has the bill in charge tell us what it is?

Mr. SCOTT. I will say to the Senator from Colorado that it is a joint resolution, which was read the other day. It makes the same provision that has been made for every inauguration since 1805.

Mr. TELLER. It provides for the use of the Pension building?

Mr. SCOTT. It provides for the use of the Pension building and provides for extra police, who will look after pickpockets and others who come here and enable the city to see that the visitors here are properly cared for. It is in the same form as the joint resolutions which have been passed heretofore.

Mr. TELLER. I only wanted to say that if it provides for the use of the Pension Office, there are certain rooms that ought to be reserved for the use of the Pension Office, where they can put their files, and so forth, and not have to remove them from the building.

Mr. SCOTT. If the Senator will allow me, I will state that the two upper stories will not be disturbed, and instead of the space of twenty days that has heretofore been suggested, the committee of arrangements state that they will ask for only eight consecutive days, two of those being Sundays, so that the employees on the first floor will lose only a week.

Mr. TELLER. If two stories are not to be occupied for this purpose, there will be plenty of room in the Pension Office for storing the papers.

The joint resolution was reported to the Senate as amended, and the amendment was concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

BRIDGE NEAR ST. PAUL, MINN.

Mr. NELSON. I ask unanimous consent for the present consideration of the bill (H. R. 23866) to amend an act entitled "An act to authorize the construction of a bridge between Fort Snelling Reservation and St. Paul, Minn.," approved March 17, 1906.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

It proposes to amend section 9 of the act so as to read:

SEC. 9. That this act shall be null and void if actual construction of the bridge herein authorized shall not be commenced within one year and completed within four years from the date hereof.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

EXECUTIVE SESSION.

Mr. CULLOM. I now insist on my motion for an executive session.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After fifteen minutes spent in executive session the doors were reopened, and (at 3 o'clock and 45 minutes p. m.) the Senate adjourned until to-morrow, Thursday, January 14, 1909, at 12 o'clock meridian.

CONFIRMATIONS.

Executive nominations confirmed by the Senate January 13, 1909.

CONSUL-GENERAL.

William H. Robertson, of Virginia, to be consul-general of the United States of class 6 at Tangier, Morocco.

CONSUL.

Herbert R. Wright, of Iowa, to be consul of the United States of class 9 at Puerto Cabello, Venezuela.

UNITED STATES MARSHAL.

Henry K. Love, of Iowa, to be United States marshal for the district of Alaska, division No. 3.

RECEIVER OF PUBLIC MONEYS.

William M. Enright, of Billings, Mont., to be receiver of public moneys at Billings, Mont.

POSTMASTERS.

ALABAMA.

Harvey E. Berkstresser to be postmaster at Dadeville, Ala.
Sylvanus L. Sherrill to be postmaster at Hartsells, Ala.

ARIZONA.

W. Weiss to be postmaster at Clifton, Ariz.

ARKANSAS.

J. E. Woodson to be postmaster at Hope, Ark.

FLORIDA.

F. A. Florence to be postmaster at Paxton, Fla.
William Clarence Smith to be postmaster at Daytona, Fla.
Louis Wiselogel to be postmaster at Marianna, Fla.

IDAHO.

Joseph R. Collins to be postmaster at Moscow, Idaho.

INDIANA.

Louis T. Bell to be postmaster at Flora, Ind.
Joseph E. Gordon to be postmaster at Versailles, Ind.
Charles Fremont Hoover to be postmaster at Akron, Ind.
Charles McGaughey to be postmaster at Roachdale, Ind.
Howard H. Newby to be postmaster at Sheridan, Ind.
John R. Nordyke to be postmaster at Wolcott, Ind.
Knode D. Porter to be postmaster at Hagerstown, Ind.
William E. Sholty to be postmaster at Windfall, Ind.
Frank D. Walters to be postmaster at Monroeville, Ind.

MISSISSIPPI.

Lillie W. Nugent to be postmaster at Rosedale, Miss.

NEW JERSEY.

Isaiah Apgar to be postmaster at Califon, N. J.
Alfred B. Gibb to be postmaster at Bernardsville, N. J.
Uzal S. Hancy to be postmaster at Franklin Furnace, N. J.
Howard V. Locke to be postmaster at Swedesboro, N. J.
Charles W. Russell to be postmaster at New Brunswick, N. J.

NEW YORK.

Daniel Smiley to be postmaster at Mohonk Lake, N. Y.
Wallace H. Wells to be postmaster at Brasher Falls, N. Y.

NORTH CAROLINA.

J. Walter Jones to be postmaster at North Wilkesboro, N. C.
Zach Stephenson to be postmaster at Clayton, N. C.

OHIO.

Roscoe G. Hombeck to be postmaster at London, Ohio.
Percy May to be postmaster at New Holland, Ohio.
E. Calvin Miller to be postmaster at New Carlisle, Ohio.

PENNSYLVANIA.

Zacharias A. Bowman to be postmaster at Annville, Pa.
Elmer D. Carl to be postmaster at Greencastle, Pa.
Joseph B. Colcord to be postmaster at Port Allegany, Pa.
Frank A. Howe to be postmaster at Waterford, Pa.
Roscoe C. Keefer to be postmaster at Clairton, Pa.
William P. McMasters to be postmaster at Munhall, Pa.

UTAH.

James Clove to be postmaster at Provo, Utah.

ARBITRATIONS.

The injunction of secrecy was removed from the following conventions:

An arbitration convention between the United States and Bolivia, signed at Washington on January 7, 1909. (Ex. J, 60th, 2d.)

An arbitration convention between the United States and Ecuador, signed at Washington on January 7, 1909. (Ex. K, 60th, 2d.)

An arbitration convention between the United States and Haiti, signed at Washington on January 7, 1909. (Ex. L, 60th, 2d.)

An arbitration convention between the United States and Republic of Uruguay, signed at Washington on January 9, 1909. (Ex. M, 60th, 2d.)

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January 13, 1909.*

The House met at 12 o'clock m.

Prayer by the Chaplain of the Senate, Rev. Edward Everett Hale.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its secretaries, announced that the Senate insisted upon its amendments to the amendments of the House to the bill (S. 653) to authorize commissions to issue in the cases of officers of the army retired with increased rank, disagreed to by the House, agreed to the conference asked by the House, and had appointed Mr. WARREN, Mr. SCOTT, and Mr. TALIAFERRO as conferees on the part of the Senate.

SENATE BILLS REFERRED.

Under clause 2, Rule XXIV, bills of the Senate of the following titles were taken from the Speaker's table, under the rule, and referred as follows:

S. 7925. An act to create an additional land district in the State of Montana, to be known as the "Harlowton land district"—to the Committee on the Public Lands.

S. 7992. An act to amend an act entitled "An act to provide for participation by the United States in an international exposition to be held at Tokyo, Japan, in 1912," approved May 22, 1908—to the Committee on Foreign Affairs.

S. 7918. An act for the relief of Bernard W. Murray—to the Committee on Claims.

S. 7257. An act providing a means for acquiring title to private holdings in the Sequoia and General Grant national parks in the State of California, in which are big trees and other natural curiosities and wonders—to the Committee on Appropriations.